

1 SUPERIOR COURT OF THE STATE OF CALIFORNIA
2 FOR THE COUNTY OF LOS ANGELES
3 DEPARTMENT 308 HON. CHARLES MC COY, JUDGE
4 RICHARD BOEKEN,)
)
5 PLAINTIFF,)
)
6)
) CASE NO. BC226593
7 VS.)
)
8 PHILIP MORRIS,) VOLUME 37
INCORPORATED, A)
9 CORPORATION; INTERNATIONAL)
HOUSE OF PANCAKES)
10 INCORPORATED, A)
CORPORATION.)
11)
DEFENDANTS.)
12)
13 REPORTER'S DAILY TRANSCRIPT OF PROCEEDINGS
14 THURSDAY, MAY 17TH, 2001
15 APPEARANCES:
16 (FOR PLAINTIFF) LAW OFFICES OF
 MICHAEL J. PIUZE
17 11755 WILSHIRE BLVD.
 SUITE 1170
18 LOS ANGELES, CA 90025
19 (FOR DEFENDANTS) ARNOLD & PORTER
 BY: MAURICE A. LEITER
20 JOHN CARLTON
 777 S. FIGUEROA ST.
21 44TH FLOOR
 LOS ANGELES, CA 90017
22
LISA C. RIDLEY
23 OFFICIAL REPORTER
600 S. COMMONWEALTH AVE.
24 ROOM 308
LOS ANGELES, CA 90005
25
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5812

1 LOS ANGELES, CALIFORNIA; THURSDAY, MAY 17TH, 2001
2 9:05 A.M.
3 DEPARTMENT 308 HON. CHARLES MC COY, JUDGE
4
5 (THE FOLLOWING PROCEEDINGS WERE
6 HELD IN OPEN COURT:)
7
8 THE COURT: GOOD MORNING, GOOD COUNSEL.
9 GOOD TO SEE YOU.
10 ALL RIGHT. TWO ITEMS, AND IF
11 COUNSEL HAVE OTHER THINGS THEY NEED TO TAKE UP,
12 WE CAN TAKE THEM UP.
13 FIRST IS I PUT SOME REVISED JURY
14 INSTRUCTIONS OUT ON YOUR COUNSEL TABLE BUT I LOOKED
15 BACK THROUGH PAPERS AND THERE ARE A COUPLE MORE
16 CORRECTIONS THAT NEED TO BE MADE.

17 MR. CARLTON: I CAN'T HEAR YOU.
18 THE COURT: THERE ARE A COUPLE
19 CORRECTIONS THAT NEEDED TO BE MADE TO THE REVISED
20 JURY INSTRUCTIONS THAT I GAVE YOU AND A COUPLE OF
21 THE INSTRUCTIONS DIDN'T MAKE IT THROUGH THE
22 COMPUTER LIST. BUT I THINK I CAUGHT THEM SO IF YOU
23 WOULD PLEASE CAREFULLY LOOK AT THE INSTRUCTIONS TO
24 MAKE SURE THAT THEY ARE CORRECT AS FAR AS YOU CAN
25 TELL.
26 AND I WILL ASK MY CLERK TO GIVE
27 THEM TO YOU.
28 OUTSTANDING. ONE OUTSTANDING

5813

1 MATTER THAT I DO HAVE TO RULE ON IS THE MATTER OF
2 THE HOSHIZAKI TESTIMONY AND THE DOCUMENT IN
3 CONNECTION WITH THAT THAT PLAINTIFF'S COUNSEL
4 WISHES TO GET INTO EVIDENCE.
5 A REVIEW OF HER TESTIMONY INDICATES
6 TO THE COURT THAT SHE TESTIFIED CATEGORICALLY ON
7 CERTAIN SUBJECTS WHICH ARE, IT SEEMS TO THE COURT,
8 AT LEAST QUITE RELEVANT TO THAT DOCUMENT.
9 SHE STATED THAT TOBACCO COMPANIES
10 ARE NOT C.T.R. SHE STATED THAT C.T.R. WAS
11 FUNCTIONING INDEPENDENTLY OF THE TOBACCO COMPANIES
12 AND THAT C.T.R. CONTINUED TO FUNCTION INDEPENDENTLY
13 OF THE TOBACCO COMPANIES.
14 SHE STATED THAT THE, QUOTE, BOTTOM
15 LINE IS THAT C.T.R. WAS INDEPENDENT OF THE TOBACCO
16 COMPANIES. WHEN ASKED ABOUT THE COMMITTEE OF
17 COUNCIL, SHE SAID I DIDN'T THINK THAT WAS IMPORTANT
18 TO MY UNDERSTANDING OF C.T.R.
19 SHE STATED, QUOTE, THEY DID NOT
20 ALLOW THE LAWYERS TO RUN C.T.R. AND THEY CONTINUED
21 FUNCTIONING AS AN INDEPENDENT ORGANIZATION.
22 SHE STATED THE BOTTOM LINE IS THAT
23 C.T.R. CONTINUED TO FUNCTION AS AN INDEPENDENT
24 ORGANIZATION. SHE ALSO STATED THE BOTTOM LINE IS
25 THAT THE S.A.B. MEMBERS AND THE SCIENTIFIC DIRECTOR
26 CONTINUED TO RUN C.T.R. AND TO DETERMINE WHAT
27 RESEARCH WAS BEING FUNDED.
28 SHE STATED, QUOTE, THE FACT IS THAT

5814

1 THE LAWYERS WERE NOT RUNNING C.T.R. SHE STATED,
2 QUOTE, WE KNOW FOR A FACT THAT C.T.R. WAS NOT BEING
3 RUN BY THE LAWYERS.
4 AND THERE WERE OTHER REFERENCES IN
5 HER TESTIMONY TO MATTERS WHICH, IT APPEARS TO THE
6 COURT, ARE AT LEAST ARGUABLY DIRECTLY CONTRADICTED
7 BY THE DOCUMENT IN QUESTION.
8 THE EVIDENCE IS THAT SHE WAS GIVEN
9 A HUGE VOLUME OF DOCUMENTS APPARENTLY FROM THE
10 MINNESOTA LITIGATION. THE DOCUMENT IN QUESTION WAS
11 PLACED ON THE PUBLIC RECORD THERE AND IN THAT
12 LITIGATION IT WAS PLACED ON THE PUBLIC RECORD UNDER
13 APPARENTLY THE CRIME FRAUD EXCEPTION.
14 IN REVIEWING THE MINNESOTA
15 LITIGATION DOCUMENTS, AS THE BASIS OF HER ANALYSIS,
16 THE COURT BELIEVES THAT SHE OPENED THE DOOR TO ALL
17 DOCUMENTS RELEVANT TO HER INQUIRY FROM THAT
18 LITIGATION, INCLUDING THE DOCUMENT IN QUESTION.
19 SHE CAN BE LEGITIMATELY IMPEACHED
20 WITH ANY DOCUMENTS RELEVANT TO HER TESTIMONY FROM
21 THE MINNESOTA LITIGATION THAT WERE ON THE PUBLIC

22 RECORD AND ANY SUCH DOCUMENT IS ADMISSIBLE INTO
23 THIS COURT AS EVIDENCE. AND THE COURT BELIEVES
24 THAT IT HAS THE DISCRETION TO ALLOW ITS ADMISSION
25 FOR THE PURPOSES OF IMPEACHMENT.

26 THE COURT FINDS THAT THE DOCUMENT
27 IN QUESTION IS RELEVANT HERE. THERE ARE SUFFICIENT
28 INDICIA OF AUTHENTICITY ON THE FACE OF THE DOCUMENT

5815

1 AND ON THE MINNESOTA RECORD.

2 THE DOCUMENT IS ADMISSIBLE FOR
3 IMPEACHMENT PURPOSES AND IN VIEW OF THE FACT THAT
4 IT WAS PART OF THE MINNESOTA PUBLIC RECORD FROM
5 WHICH THE WITNESS'S DOCUMENTS WERE SELECTED FOR
6 REVIEW.

7 FINALLY, AS THE COURT STATED
8 YESTERDAY, IN LIGHT OF THE WITNESS'S CATEGORICAL
9 STATEMENTS ABOUT THE LEGITIMACY OF C.T.R. AND WHO
10 WAS RUNNING IT, SOME OF WHICH I JUST ALLUDED TO,
11 THE COURT BELIEVES THAT IF IT DOES NOT ADMIT THIS
12 DOCUMENT INTO EVIDENCE, IT WOULD RISK A SUBSTANTIAL
13 INJUSTICE. AND THEREFORE, THE DOCUMENT SHALL BE
14 ADMITTED INTO EVIDENCE.

15 WOULD COUNSEL PLEASE JOIN ME IN
16 CHAMBERS.

17
18 (A DISCUSSION WAS HELD IN
19 CHAMBERS, NOT REPORTED.)

20
21 THE COURT: I BELIEVE WE HAVE ONE
22 STIPULATION?

23 MR. LEITER: YES. YOUR HONOR, WE HAVE
24 STIPULATED TO THE ADMISSIBILITY OF PLAINTIFF'S
25 EXHIBIT 10026.

26
27 * (EXHIBIT 10,026, DOCUMENT,
28 RECEIVED IN EVIDENCE.)

5816

1 THE COURT: SO AGREED?

2 MR. PIUZE: YES.

3 THE COURT: VERY WELL. ACCEPTED.

4 IF WE COULD BRING THE JURY IN,
5 PLEASE.

6
7 (THE FOLLOWING PROCEEDINGS
8 WERE HELD IN OPEN COURT IN
9 THE PRESENCE OF THE JURY.)

10
11 THE COURT: GOOD MORNING, LADIES AND
12 GENTLEMEN. YOU ARE ALL THE RESTED READY TO GO.

13 GOOD MORNING, GOOD COUNSEL.

14 GOOD TO HAVE YOU HERE THIS MORNING.

15 WELL, LADIES AND GENTLEMEN, WE ARE
16 NOW GOING TO HEAR THE CLOSING SUMMATIONS FROM OUR
17 GOOD LAWYERS IN THIS CASE.

18 A COUPLE THINGS I WANT TO SAY TO
19 YOU.

20 FIRST IS, AS I TOLD YOU, WHEN WE
21 WERE LAST TOGETHER, ALL THE EVIDENCE IS IN. SO
22 THERE AREN'T GOING TO BE ANY MORE WITNESSES. I
23 HAVE RULED ON ALL THE DOCUMENTARY EVIDENCE THAT
24 WILL BE ALLOWED IN THE CASE. SO THAT ANYTHING THAT
25 THE LAWYERS MIGHT SAY TO YOU NOW IS ARGUMENT. YOU
26 MUST REMEMBER THAT. THEY CANNOT CREATE EVIDENCE

27 THROUGH THEIR OWN TESTIMONY, OBVIOUSLY, THEY ARE
28 NOT SWORN WITNESSES OR ANYTHING LIKE THAT.

5817

1 BUT THESE GOOD LAWYERS ARE GOING TO
2 DO ALL OF US A GREAT SERVICE ON BOTH SIDES OF THIS
3 CASE.

4 BECAUSE WHAT THEY ARE GOING TO DO
5 IS THEY ARE GOING TO TAKE ALL THAT EVIDENCE THAT WE
6 HAVE WATCHED AND LISTENED TO, OVER THE COURSE OF
7 THE LAST SIX WEEKS OR SO, AND SUM IT, DRAW IT ALL
8 TOGETHER, SO THAT WE CAN SEE HOW IT FITS TOGETHER.

9 BUT WE HAVE TO REMEMBER, OF COURSE,
10 IS THAT THERE ARE TWO SIDES TO THIS STORY. SO
11 THERE PROBABLY ARE GOING TO BE TWO VERY DIFFERENT
12 INTERPRETATIONS OF HOW IT ALL FITS TOGETHER.

13 YOUR JOB, OF COURSE, IS TO KEEP AN
14 OPEN MIND THROUGHOUT THIS WHOLE EXPERIENCE, BUT
15 ULTIMATELY, YOU ARE THE ONES WHO ARE GOING TO HAVE
16 TO DECIDE WHICH OF THE TWO VERSIONS OF THIS CASE
17 ARE THE CORRECT -- IS THE CORRECT VERSION,
18 FACTUALLY.

19 ALL RIGHT. AND WHAT YOU WILL DO IS
20 YOU WILL DECIDE THE FACTS IN THIS CASE, ULTIMATELY.

21 THEN, AFTER ALL THE ARGUMENTS ARE
22 OVER, I WILL THEN INSTRUCT YOU ON THE LAW. YOU
23 WILL GO BACK TOGETHER, MAKE YOUR DECISION ON THE
24 FACTS AND THEN THE LAW ULTIMATELY WILL TELL YOU
25 WHAT YOUR VERDICT MUST BE IN THIS CASE.

26 ALL RIGHT. THAT HAVING BEEN SAID,
27 ONE OTHER THING, THE PLAINTIFF HAS THE OPPORTUNITY
28 TO SPEAK TO YOU FIRST, BECAUSE THE PLAINTIFF HAS

5818

1 THE BURDEN OF PROOF ON MOST ALL THE ISSUES IN THIS
2 CASE.

3 THE DEFENSE WILL THEN HAVE A
4 COMPLETE OPPORTUNITY TO TALK TO YOU AND THEN THE
5 PLAINTIFF WILL THEN BE GIVEN ONE LAST OPPORTUNITY
6 TO SPEAK TO YOU AND THAT IS, AGAIN, BECAUSE OF THE
7 BURDEN, OR THE BURDENS IN THIS CASE ON THE
8 PLAINTIFF.

9 THAT HAVING BEEN SAID, IS THE
10 PLAINTIFF READY TO ADDRESS THE JURY?

11 MR. PIUZE: YEAH.

12 THE COURT: THANK YOU.

13

14 OPENING ARGUMENT

15

16 BY MR. PIUZE:

17 FIRST, I APOLOGIZE FOR GETTING A
18 BUNCH OF YOU SICK.

19 SECOND, I WANT YOU TO LISTEN
20 CAREFULLY DURING THE ARGUMENTS WHICH I THINK WILL
21 TAKE MORE THAN A DAY. AND THIS CASE MERITS MORE
22 THAN A DAY. AND I WANT YOU TO LISTEN CAREFULLY SO
23 YOU CAN HEAR PHILIP MORRIS SAY, WE ARE SORRY WE GOT
24 MR. BOEKEN SICK.

25 AND I APOLOGIZE FOR GETTING YOU
26 GUYS SICK. AND I CALL ON THEM, OVER THE COURSE OF
27 THE NEXT DAY, DAY AND A HALF, TWO DAYS, TO
28 APOLOGIZE FOR GETTING MR. BOEKEN SICK.

5819

1 IT WAS PRETTY OBVIOUS WE ARE NOT
2 STUPID. IT'S PRETTY OBVIOUS WHAT HAPPENED. THERE

3 WAS A LITTLE COMPANY, THERE WAS A LITTLE INDUSTRY,
4 THIS INDUSTRY DIDN'T EXIST BEFORE 1920.
5 IT'S KIND OF HARD FOR US TO
6 IMAGINE, US WHO HAVE GROWN UP IN A SMOKING
7 ENVIRONMENT, US WHO ARE IN OUR 50'S AND WE KNOW
8 THAT ALMOST 60 PERCENT OF AMERICAN MEN SMOKED WHEN
9 WE WERE GROWING UP, THAT'S ACCORDING TO THE DEFENSE
10 LAST WITNESS HERE, IT'S KIND OF HARD FOR US TO
11 BELIEVE THAT THIS ISN'T THE NECESSITY OF LIFE, THIS
12 ISN'T THE CENTERPIECE OF LIFE, THIS WASN'T ALWAYS
13 AROUND UNTIL 1920 OR SO.

14 THERE WAS NONE OF THIS BECAUSE
15 THERE WERE NO MACHINES TO MAKE THEM. PEOPLE GOT
16 ALONG PERFECTLY WELL WITHOUT THIS. THE WORLD CAN
17 DO WITHOUT THIS.

18 SOMEDAY PEOPLE ARE GOING TO LOOK
19 BACK ON THE 20TH CENTURY HERE, FROM ABOUT 1920 OR
20 SO, MAYBE 1930, BECAUSE THIS DISEASE TAKES A LAG
21 TIME, IT DOESN'T JUST HAPPEN, AND GOING WHO KNOWS
22 HOW FAR IT IS GOING TO GO, MAYBE YOU WILL HAVE
23 SOMETHING TO SAY ABOUT HOW FAR IT IS GOING TO GO,
24 BUT PEOPLE ARE GOING TO LOOK BACK SOMEDAY FROM
25 MAYBE AROUND 1930 OR SO INTO 2010 OR 2030 AND SAY,
26 WHAT WAS THAT ALL ABOUT?

27 BECAUSE WE LIVED FOR THOUSANDS AND
28 THOUSANDS AND THOUSANDS OF YEARS WITHOUT HAVING

5820

1 THESE THINGS, AND I AM SURE WE ARE GOING TO LIVE
2 AGAIN WITHOUT HAVING THESE THINGS.

3 THIS WAS, ACCORDING TO ELLEN MERLO
4 A RELATIVELY LITTLE COMPANY. AND THIS BUILT THE
5 LARGEST CONSUMER RETAIL EMPIRE IN THE WORLD.

6 THIS THING.

7 SO IT'S REAL EASY TO KNOW WHAT
8 HAPPENED HERE. WHAT HAPPENED HERE IS THAT SOME
9 FARMERS GROW TOBACCO, IT'S A DIRT CHEAP OPERATION,
10 IT'S MADE INTO CIGARETTES, MAKE A NICE LITTLE
11 PROFIT, AND IT'S A NICE BUSINESS.

12 FARMERS MAKE SOME MONEY, AND PEOPLE
13 IN THE FACTORY MAKE SOME MONEY, AND THE
14 SHAREHOLDERS MAKE SOME MONEY AND THE STOCKHOLDERS
15 MAKE SOME MONEY. AND IT'S A NICE BUSINESS.

16 JUST LIKE GROWING TOMATOES, JUST
17 LIKE GROWING LETTUCE.

18 EXCEPT FOR ONE THING, AFTER AWHILE,
19 IT BECAME OBVIOUS TO SCIENCE AND TO MEDICINE THAT
20 THIS STUFF KILLED PEOPLE, MADE PEOPLE REALLY,
21 REALLY, REALLY SICK. IT KILLED THEM. IT KILLED
22 THEM SLOWLY, PAINFULLY.

23 AND A DECISION HAD TO BE MADE.
24 IT'S NOT THE KIND OF DECISION THAT MOST OF US ARE
25 EVER PRIVY TOO. THIS IS THE KIND OF DECISION THAT
26 GETS MADE IN A BACK ROOM SOMEPLACE. AND THE
27 DECISION WAS, WHAT'S MORE IMPORTANT, MONEY OR
28 HEALTH?

5821

1 WHAT'S MORE IMPORTANT, MONEY OR
2 LIFE?

3 AND WE KNOW WHAT THE ANSWER IS.
4 FOR -- WE WILL TALK ABOUT IT 50
5 YEARS, 45 YEARS, 30 YEARS, DEPENDING ON WHO YOU
6 LISTEN TO, ACCORDING TO THE DEFENSE'S OWN WITNESS,
7 THERE WAS AN OVERWHELMING MEDICAL CONSENSUS,

8 SCIENTIFIC CONSENSUS IN 1964, THIS STUFF CAUSES
9 CANCER.
10 AND THEY LIED AND LIED AND LIED.
11 AND THEN AFTER THEY WARMED UP, THEY
12 LIED SOME MORE AND LIED SOME MORE AND LIED SOME
13 MORE.
14 AND LAST YEAR, THEY DECIDED TO STOP
15 LYING. DO YOU THINK THEY DECIDED TO STOP LYING
16 BECAUSE THEY ARE GOOD CITIZENS NOW?
17 DO YOU THINK THEY DECIDED TO STOP
18 LYING BECAUSE THEY GOT PUT IN A CORNER, FINALLY,
19 AFTER ALL THESE YEARS, A BUNCH OF BRAVE PEOPLE FROM
20 THE PUBLIC HEALTH, FROM THE ATTORNEYS GENERAL, A
21 BUNCH OF BRAVE PEOPLE RAN THEM DOWN AND PUT THEM IN
22 A CORNER WHERE THEY COULDN'T ESCAPE AND NOW THEY
23 SAY, OH, YEAH, OKAY, THAT'S TRUE, YOU KNOW WHAT,
24 THIS STUFF DOES CAUSE LUNG CANCER, THIS STUFF DOES
25 MAKE PEOPLE SICK, SORRY WE WERE A LITTLE LATE IN
26 FIGURING IT OUT.
27 WHAT HAPPENED WHILE THEY WERE
28 SCREWING AROUND WITH THIS? TWO THINGS.

5822

1 PHENOMENAL WEALTH HAPPENED, AND
2 DEATH AND MISERY HAPPENED.
3 STILL HAPPENING. THAT'S HOW EASY
4 THIS STORY IS.
5 NOW, THIS STORY WASN'T SO EASY 15
6 YEARS AGO OR 20 YEARS AGO OR EVEN FIVE YEARS AGO.
7 BUT THE STORY IS SO EASY NOW,
8 BECAUSE HERE IT IS, IT'S ALL LAID OUT. THEY GOT
9 RUN DOWN. THEY GOT CORNERED. THE EVIDENCE GOT
10 TAKEN FROM THEM. AND NOW THAT THE EVIDENCE IS OUT
11 IN THE OPEN FOR EVERYONE TO SEE, A NEW PHILIP
12 MORRIS HAPPENED. WE ARE A DIFFERENT COMPANY. WE
13 GIVE TO CHARITY. WE FUND HOMELESS SHELTERS. WE
14 ADMIT SMOKING CAUSES LUNG CANCER. WE ADMIT
15 NICOTINE IS ADDICTIVE. WE WERE JUST A LITTLE LATE
16 IN COMING TO THAT, AND IT JUST SO HAPPENS THAT WE
17 FIGURED IT OUT AT THE TIME WE GOT PUT UP AGAINST
18 THE WALL WHERE WE COULD NEVER ESCAPE.
19 SO HERE WE ARE NOW AND THE QUESTION
20 IS, I GUESS, AFTER -- IT'S LIKE WHEN ALL THESE
21 THINGS I SEE ON "HILL STREET BLUES" OR ONE OF THESE
22 POLICE DRAMAS WHERE THE POLICE SAY, LOOK, TELL US
23 NOW WHAT IT IS, CONFESS NOW, DON'T MAKE US WORK FOR
24 IT, WE WILL CUT YOU A DEAL, WE WILL GO TO THE D.A.,
25 WE WILL CUT YOU A DEAL. BUT IF YOU MAKE US RUN YOU
26 DOWN, IF YOU MAKE US GET ALL THE EVIDENCE, IF YOU
27 ARE GOING TO DENY THIS, WE ARE GOING TO THROW THE
28 BOOK AT YOU.

5823

1 WELL, THAT'S WHAT HAPPENED. AND
2 THAT'S WHERE WE ARE.
3 AND WHEN I AM DONE HERE, I AM GOING
4 TO ASK YOU TO THROW THE BOOK AT THEM.
5 REMEMBER DR. HAMMER'S TEXTBOOK, MR.
6 CARLTON SAYS IT WAS THE HEAVIEST BOOK HE EVER SAW.
7 I WANT YOU TO THROW A CARTON OF THOSE BOOKS AT
8 THEM.
9 RIGHT HERE, NO KIDDING, LOOK, RIGHT
10 HERE, COULD BE THE SINGLE MOST IMPORTANT THING ANY
11 ONE OF US DOES OUTSIDE OF OUR PERSONAL LIVES, RIGHT
12 HERE.

13 WE HEARD FROM, I THINK, PROFESSOR
14 COBBS HOFFMAN, SHE'S THE HISTORIAN FROM SAN DIEGO.
15 WE HEARD THAT CALIFORNIA LEADS THE NATION, WHEN IT
16 COMES TO SMOKING, SMOKING REDUCTION, SMOKING
17 CESSATION. CALIFORNIA PASSED PROPOSITION 99, TAXED
18 CIGARETTES, USED THE MONEY FROM CIGARETTES TO PUT
19 ON ANTI-SMOKING ADS.

20 CALIFORNIA WAS ONE OF THE FIRST
21 PLACES TO MAKE IT ILLEGAL TO SMOKE IN PUBLIC
22 BUILDINGS, TO SMOKE IN RESTAURANTS, TO SMOKE IN
23 BARS. AS A RESULT, CALIFORNIA SMOKING RATE HAS
24 GONE WAY DOWN FASTER THAN THE NATION.

25 AS A RESULT, THE DEATH RATE IN
26 CALIFORNIA HAS GONE WAY DOWN FASTER THAN THE
27 NATION.

28 OKAY. CALIFORNIA, IT'S TIME AGAIN

5824

1 TO LEAD RIGHT HERE AND RIGHT NOW.

2 AND BECAUSE WHAT I AM GOING TO ASK
3 YOU TO DO IN THE END IS EXTRAORDINARY, I AM GOING
4 TO THANK YOU IN ADVANCE FOR YOUR PATIENCE, BECAUSE
5 I AM GOING TO TAKE SOME TIME HERE AND I AM ALSO
6 GOING TO THANK YOU ON BEHALF OF RICHARD BOEKEN AND
7 JUDY BOEKEN FOR ALL OF THE PATIENCE THAT YOU HAVE
8 EXHIBITED THROUGHOUT THE TRIAL AND ALL OF THE
9 ATTENTION YOU HAVE EXHIBITED THROUGHOUT THE TRIAL.

10 SOME OF THE STUFF WAS KIND OF
11 THICK. AND I KNOW ONE DAY WE READ FROM SOME
12 DEPOSITION ALL DAY LONG, A DR. MELE, AND ANOTHER
13 DAY A DR. UYDESS. AND I AM SORRY WE PUT YOU TO
14 SLEEP. I PUT YOU TO SLEEP. BUT I TRULY, TRULY, ON
15 BEHALF OF THE BOEKEN'S, APPRECIATE THE TIME AND THE
16 ENERGY AND THE THOUGHT YOU HAVE DEVOTED TO THIS SO
17 FAR AND THAT YOU ARE GOING TO.

18 SO HERE WE GO.

19 THIS IS WHAT PHILIP MORRIS TOLD THE
20 PRESS THROUGH ITS WEB SITE ABOUT WHAT WE WERE GOING
21 TO BE DOING HEAR. WE STARTED ON MARCH 19, THIS
22 WENT UP BEFORE MARCH 19.

23 AND WHAT THIS SAID IS, MR. BOEKEN
24 BECAME A REGULAR SMOKER IN 1957, WHEN HE WAS ABOUT
25 13 YEARS OLD.

26 PHILIP MORRIS WILL ARGUE THAT THERE
27 IS SUBSTANTIAL EVIDENCE THAT MR. BOEKEN HAD LONG
28 BEEN AWARE OF THE POTENTIAL HEALTH RISKS OF SMOKING

5825

1 WHICH WERE COMMON KNOWLEDGE THROUGHOUT THE
2 COMMUNITY BEFORE HE STARTED SMOKING.

3 SO LET'S STOP THERE A SECOND.
4 13-YEAR-OLD KID STARTS SMOKING IN
5 1957.

6 PHILIP MORRIS IS GOING TO ARGUE
7 THAT IT WAS SUCH COMMON KNOWLEDGE BEFORE 1957 THAT
8 SMOKING WAS A HEALTH RISK THAT MR. BOEKEN SHOULD GO
9 HOME.

10 THE COMPANY ALSO CONTENTS IT HAD NO
11 DUTY TO WARN MR. BOEKEN OF THE RISKS THAT HE
12 ALREADY KNEW.

13 SO LET'S KEEP THAT STRAIGHT.

14 MR. BOEKEN, 13 YEARS OLD, SHOULD
15 HAVE KNOWN ABOUT THE HEALTH RISKS OF TOBACCO IN
16 1957. REMEMBER THAT, PLEASE.

17 NOW, THERE WAS A GUY WHO CAME IN

18 HERE, I DIDN'T CALL HIM, DR. LUDMERER.
19 DR. LUDMERER IS A HISTORIAN. HE IS A MEDICAL
20 HISTORIAN.
21 DR. LUDMERER CAME IN HERE AND GAVE
22 US HIS, THIS IS A THEME I AM GOING TO TOUCH ON
23 EVERY ONCE IN AWHILE, HIS \$300,000 OPINION.
24 AND HIS \$300,000 OPINION WAS THAT,
25 FROM 1950, WHEN A FAMOUS BRITISH MEDICAL TEAM FIRST
26 STATED THE RISKS OF SMOKING BEING ABSOLUTELY THE
27 CAUSE OF LUNG CANCER, UP UNTIL THE VERY TINY END OF
28 THE YEAR 2000 WHEN PHILIP MORRIS FINALLY FIGURED IT

5826

1 OUT AND ADMITTED IT, OVER THAT 50-YEAR SPAN, BY
2 EARLY JANUARY, 1964, THAT'S WHEN THERE WAS A
3 CONSENSUS THAT CIGARETTE SMOKING WAS THE MAJOR
4 CAUSE OF LUNG CANCER.
5 SO LET ME ASK A REALLY STUPID
6 QUESTION.
7 HOW IN THE WORLD WAS THIS
8 13-YEAR-OLD KID SUPPOSED TO FIGURE OUT ABOUT THE
9 HEALTH RISKS OF SMOKING IN 1957 WHEN THERE WAS NO
10 CONSENSUS IN THE SCIENTIFIC COMMUNITY UNTIL JANUARY
11 OF 1964 THAT THERE WAS ANY CONNECTION?
12 HOW DOES THAT WORK?
13 SO I THINK THAT'S A STUPID
14 QUESTION.
15 HOW IS IT THAT PEOPLE, HUMAN
16 BEINGS, REGULAR CONSUMERS, PEOPLE WITH HIGH SCHOOL
17 EDUCATIONS, PEOPLE WITH LESS THAN HIGH SCHOOL
18 EDUCATIONS, WERE SUPPOSED TO KNOW ABOUT ALL OF THE
19 HEALTH RISKS OF SMOKING WHEN THE SCIENTISTS THAT
20 WORKED FOR PHILIP MORRIS AND THE EXPERT WITNESSES
21 THAT HAVE BEEN PAID BY PHILIP MORRIS, AND THE
22 PUBLIC RELATION PEOPLE THAT WORK FOR PHILIP MORRIS,
23 AND ALL THE KING'S HORSES AND ALL THE KING'S MEN
24 COULDN'T FIGURE IT OUT? HOW IS THAT POSSIBLE?
25 THROUGHOUT THIS TRIAL, I HEAR A
26 DR. COBBS HOFFMAN SAY EVERYONE IN THE WORLD KNEW,
27 EXCEPT THE TOBACCO EXECUTIVES AND THEIR SCIENTISTS
28 AND THEIR SPOKESPEOPLE, AND I HEAR ANOTHER PHILIP

5827

1 MORRIS WITNESS SAY, WELL, GEE WHIZ, WE WERE
2 CONDUCTING ALL THIS GREAT RESEARCH AND WE WERE
3 TRYING TO RUN IT DOWN AND TRYING TO FIND OUT WHAT
4 IT WAS AND WE NEVER COULD.
5 AND I AM TRYING TO FIGURE OUT HOW
6 IS IT THAT MY GUY, RICHARD BOEKEN, 13 YEARS OLD,
7 WAS SUPPOSED TO KNOW ALL THIS STUFF LIKE PHILIP
8 MORRIS TELLS YOU, WHEN THEIR OWN BEST SCIENTISTS
9 COULD NEVER FIGURE IT OUT?
10 AND I GUESS THAT'S A STUPID
11 QUESTION.
12 HERE'S WHEN I THINK, HERE'S WHAT I
13 THINK THE EVIDENCE SHOWS ABOUT WHEN SCIENCE AND
14 MEDICINE AND THE CORPORATIONS THAT MANUFACTURE THE
15 PRODUCT SHOULD HAVE KNOWN.
16 MY FIRST WITNESS, MR. BOEKEN'S
17 FIRST WITNESS, WAS DR. DOLL.
18 AND I WAS SORT OF IN THE FOG OF
19 FLUE WHILE IT WAS GOING ON SO I TOOK THE LIBERTY OF
20 GOING BACK AND READING A LITTLE BIT OF DR. DOLL'S
21 TESTIMONY AND I JUST WANTED TO REMIND YOU OF A
22 COUPLE OF THINGS, IF I COULD.

23 ROYAL MEDAL FROM THE ROYAL SOCIETY
24 IN GREAT BRITAIN. GOLD MEDAL, BRITISH MEDICAL
25 ASSOCIATION. PRESIDENTIAL AWARD, NEW YORK ACADEMY
26 OF SCIENCE. UNITED NATION'S AWARD FOR CANCER
27 RESEARCH. THE QUEEN MADE HIM A NIGHT IN 1971. IN
28 1996 HE RECEIVED THE COMPANION OF HONOR AWARD,

5828

1 WHICH IS THE HIGHEST, SECOND HIGHEST HONOR ANYONE
2 IN THE BRITISH EMPIRE CAN GET, THERE'S. 65 PEOPLE
3 IN THE BRITISH EMPIRE THAT HAVE THAT AWARD.

4 OUR FIRST WITNESS IS ONE OF THEM.
5 SO SIR RICHARD DOLL, DR. DOLL, IS
6 LITERALLY, TRULY, A GIANT OF MEDICINE IN THE 20TH
7 CENTURY.

8 AND IF YOU WANT TO LISTEN TO SOME
9 OF THE THINGS DR. LUDMERER, PHILIP MORRIS'S MEDICAL
10 HISTORIAN SAID, HE ACTUALLY THOUGHT THAT THE
11 EPIDEMIOLOGICAL MODEL THAT DR. DOLL AND DR. HILL
12 AND DR. WYNDER AND GRAHAM IN THE UNITED STATES MADE
13 WILL HISTORICALLY BE A MORE IMPORTANT THING THAN
14 THE LINKING OF CIGARETTES AND LUNG CANCER.

15 NOW, I HAVE GOT NO CLUE IF THAT'S
16 GOING TO BE RIGHT OR NOT, BUT JUST THINK ABOUT IT,
17 THEIR MEDICAL HISTORIAN SAYS THE PLAINTIFF'S FIRST
18 WITNESS HERE DID SUCH PHENOMENAL WORK THAT IT WILL
19 GO DOWN AS MORE IMPORTANT THAN THE LINK BETWEEN
20 SMOKING AND LUNG CANCER.

21 SO HERE'S WHAT DR. DOLL HAD TO TELL
22 US.

23 IN 1950, IN THE UNITED STATES,
24 DOCTORS WYNDER AND GRAHAM PUBLISHED A STUDY WHICH
25 SHOWED THAT THERE WAS A STUPENDOUS CORRELATION
26 BETWEEN SMOKING AND LUNG CANCER. SOMETHING THAT
27 COULDN'T BE OVERLOOKED.

28 IN 1950, DR. HILL AND DR. DOLL, IN

5829

1 ENGLAND, CAME UP WITH EXACTLY THE SAME FINDING.

2 IT COULDN'T BE OVERLOOKED THAT
3 SMOKING CAUSED LUNG CANCER.

4 WHEN DR. DOLL STARTED THIS STUDY,
5 HE WAS A SMOKER. WHEN DR. DOLL STARTED THIS STUDY,
6 HE DIDN'T THINK THAT SMOKING WAS GOING TO BE LINKED
7 TO LUNG CANCER. WHEN DR. DOLL STARTED THIS STUDY,
8 HE THOUGHT THE TAR ON THE ROAD MIGHT BE LINKED TO
9 LUNG CANCER.

10 BUT WHEN DR. DOLL WAS DONE IN 1950,
11 THEY PUBLISHED IN THE BRITISH MEDICAL JOURNAL
12 "SMOKING CAUSES LUNG CANCER."

13 LET ME STOP FOR A SECOND JUST TO
14 DIGRESS A BIT AND REMIND US ALL OF SOMETHING.

15 THE FOREMOST PRESTIGIOUS MEDICAL
16 JOURNALS IN THE WORLD ARE THE "BRITISH MEDICAL
17 JOURNAL" IN ENGLAND, THE "LANCET" IN ENGLAND AND
18 THE "NEW ENGLAND JOURNAL OF MEDICINE IN AMERICA,"
19 AND JAMA, "JOURNAL OF AMERICAN MEDICAL ASSOCIATION
20 IN AMERICA."

21 SOME OF THE WITNESSES THAT HAVE
22 BEEN CALLED HERE, AND I AM THINKING SPECIFICALLY OF
23 DR. DOLL AND DR. BENOWITZ, THEY SHOULD HAVE
24 VISITING OFFICES OVER IN THOSE PLACES, THEY
25 PUBLISHED SO MUCH WORLD CLASS, FIRST RATE,
26 UNBELIEVABLE STUFF.

27 SOME OF THE WITNESSES HERE, IF

28 THERE'S -- IF THE HIGHEST RANKING IS MAJOR LEAGUE, 5830

1 WELL, THESE GUYS ARE IN THE HALL OF FAME, THE BEST
2 THERE ARE ANY PLACE.

3 AND I DON'T MEAN TO BELITTLE SOME
4 OF MY OTHER WITNESSES WHO I DIDN'T MENTION, BUT
5 THOSE TWO, THEIR CONTRIBUTIONS TO SCIENCE, THEIR
6 STATURE IN SCIENCE IS ABSOLUTELY, THERE IS NO WAY.

7 BY 1954, BY 1954, DR. DOLL HAD TOLD
8 US THAT THE AMERICAN CANCER SOCIETY HAD DONE A
9 STUDY AND HE HAD DONE HIS DOCTORS' STUDY AND WYNDER
10 AND GRAHAM HAD DONE MORE STUDIES. AND BY 1954, IT
11 WAS STATED TOBACCO TARS ARE CARCINOGENIC WHEN
12 APPLIED TO THE SKIN OF MICE.

13 AND IN 1954, THERE WAS OVERWHELMING
14 EVIDENCE IN THE SCIENTIFIC AND MEDICAL COMMUNITY
15 ABOUT WHAT CAUSED CANCER.

16 BUT DR. DOLL SAID, THAT'S NOT WHEN
17 PEOPLE REALLY SHOULD HAVE KNOWN, PEOPLE, MEANING
18 SCIENTISTS, NOT MR. BOEKEN, NOT ME, NOT YOU,
19 SCIENTISTS.

20 BECAUSE THERE WERE SKEPTICS, THERE
21 WERE PEOPLE WHO DOUBTED IT.

22 AND DR. DOLL GAVE AS THE DATE,
23 1960. AND THE REASON HE GAVE 1960 WAS THAT IN
24 1960, THE WORLD HEALTH ORGANIZATION, AT THAT TIME,
25 THE WORLD HEALTH ORGANIZATION SAID, SMOKING CAUSES
26 LUNG CANCER.

27 NOW, I'D JUST LIKE TO TALK ABOUT
28 TWO OF MY OTHER WITNESSES HERE NOW, DR. STRAUSS

5831

1 FROM BOSTON, FROM HARVARD MEDICAL SCHOOL, FROM THE
2 HARVARD SCHOOL OF PUBLIC HEALTH, HE'S A PUBLIC
3 HEALTH OFFICIAL AND AN ONCOLOGIST, AND HERE'S A MAN
4 WHO I JUST SLIGHTED A FEW SECONDS AGO BY NOT
5 MENTIONING, HE'S ONLY WRITTEN ABOUT 30 BOOKS OR
6 CHAPTERS IN BOOKS. HE'S ONLY GOT A HUNDRED OR SO
7 PEER REVIEWED ARTICLES.

8 I MEAN, THIS GUY IS A SUPERSTAR ON
9 HIS OWN RIGHT.

10 AND SO HE CAME IN AND HE SAID IN
11 HIS OPINION, HE'S READ EVERY SINGLE ARTICLE THAT'S
12 EVER BEEN WRITTEN THAT HE COULD FIND BETWEEN -- UP
13 UNTIL 1955.

14 AND HE SAID IN HIS OPINION, BY
15 1955, THE MEDICAL ESTABLISHMENT AND THE SCIENTIFIC
16 ESTABLISHMENT KNEW THAT SMOKING CAUSED LUNG CANCER.

17 DR. FEINGOLD, ANOTHER ONE OF MY
18 WITNESSES, TESTIFIED THAT IN HIS VIEW, IN 1957, THE
19 MEDICAL AND SCIENTIFIC ESTABLISHMENT KNEW THAT
20 SMOKING CAUSED LUNG CANCER.

21 SO THERE'S THREE OF THEM, '55,
22 DR. DOLL -- EXCUSE ME -- DR. STRAUSS; '57,
23 DR. FEINGOLD; '60, DR. DOLL.

24 IS IT IMPORTANT TO ME EXACTLY WHICH
25 OF THOSE IS RIGHT? NOT AT ALL.

26 BUT I AM JUST REMINDING YOU WHAT
27 THESE THREE WITNESSES SAID.

28 DR. LUDMERER, FROM THE DEFENSE,

5832

1 WHO'S CHART I HELD UP A LITTLE WHILE AGO, AS YOU
2 KNOW, SAID, YEP, OF COURSE, I KNOW OF DR. DOLL, AND
3 OF COURSE I KNOW WHAT HE HAS TO SAY. AND OF

4 COURSE, BY 1960, THE BAND WAGON HAD REALLY GOTTEN
5 ROLLING AND THINGS WERE REALLY GOING FAST AND I
6 CAN'T REALLY FAULT HIM FOR SAYING 1960 IS THE YEAR,
7 BUT I PICK '64 WHEN THE SURGEON GENERAL PUT OUT THE
8 REPORT.

9 SO BE IT. I DON'T THINK IT MATTERS
10 FOR THE PURPOSE OF THIS CASE, EXCEPT MAYBE WHEN WE
11 COME TO TALK ABOUT PUNITIVE AND EXEMPLARY DAMAGES
12 IN THIS CASE.

13 BUT THOSE ARE THE DATES. THESE ARE
14 THE PEOPLE. SOMEPLACE BETWEEN 1955, 1957, 1960 OR
15 ACCORDING TO THE DEFENSE, \$300,000 WITNESS, JANUARY
16 '64 IS WHEN SCIENCE AND MEDICINE HAD ESTABLISHED AN
17 OVERWHELMING CONSENSUS THAT SMOKING CAUSED LUNG
18 CANCER.

19 SO NOW THE NEXT QUESTION HAS TO BE
20 THAT SCIENCE AND MEDICINE HAVE OVERWHELMINGLY
21 ESTABLISHED A LINK BETWEEN SMOKING AND LUNG CANCER
22 BY SOMEPLACE AROUND '60. HOW COME IT TOOK PHILIP
23 MORRIS 40 YEARS TO ADMIT IT?

24 I HAVE GIVEN YOU THE ANSWER IN
25 ADVANCE. THE REASON IN THE YEAR 1999 OR 2000, THE
26 REASON WAS 5 BILLION.

27 NOW, HOW DID THEY AVOID THE
28 OBVIOUS? HOW DID THEY AVOID, HOW COULD THEY

5833

1 POSSIBLY AVOID COMING FORWARD AND SAYING WE KNOW,
2 WE KNOW.

3 HERE'S ANOTHER HISTORY LESSON.
4 ON JANUARY 4TH, 1954, IN NEWSPAPERS
5 AROUND THE COUNTRY, THE TOBACCO INDUSTRY ANNOUNCED
6 THE ESTABLISHMENT OF THE TOBACCO INDUSTRY RESEARCH
7 COMMITTEE, T.I.R.C.

8 THE MEMBERS OF THE TOBACCO INDUSTRY
9 RESEARCH COMMITTEE ARE ALL DOWN HERE (INDICATING).

10 AND THIS CASE, PART OF THIS CASE IS
11 CONSPIRACY. THE JUDGE IS GOING TO INSTRUCT YOU ON
12 CONSPIRACY AND I AM GOING TO PROBABLY READ YOU ONE
13 OF THE JUDGE'S JURY INSTRUCTIONS ON CONSPIRACY.

14 THE MAJOR THRUST OF THIS CASE IS
15 FRAUD. AND I AM GOING TO READ YOU SOME OF THE
16 INSTRUCTIONS THAT THE JUDGE WILL GIVE YOU ON FRAUD.

17 BUT IT STARTED SOMEPLACE BEFORE
18 JANUARY 4, 1954.

19 HERS'S A PROMISE THAT PHILIP MORRIS
20 MADE AND HERE'S A PROMISE THAT THE TOBACCO INDUSTRY
21 MADE AND HERE'S A PROMISE THAT T.I.R.C. MADE.

22 "WE ACCEPT AN INTEREST IN
23 PEOPLE'S HEALTH AS A BASIC
24 RESPONSIBILITY PARAMOUNT TO EVERY
25 OTHER CONSIDERATION IN OUR BUSINESS."

26 AS THEY SHOULD.

27 AS THE MANUFACTURERS OF FIRESTONE
28 TIRE SHOULD. BAD TIRES, RECALL THEM, DON'T STUDY

5834

1 THEM FOR 40 YEARS, BRING THEM IN.

2 AS THE MANUFACTURER OF TYLENOL
3 SHOULD, SOMEONE ADULTERATED SOME OF YOUR BOTTLES,
4 THERE'S POISON IN SOME OF THOSE BOTTLES, YOU DON'T
5 KNOW WHICH ONES, RECALL IT, GET IT IN. DON'T LEAVE
6 IT OUT THERE AND SAY WE ARE STUDYING THE SITUATION.

7 AS THE MANUFACTURERS OF JALISCO
8 CHEESE SHOULD, GOT A BAD BATCH OF CHEESE THAT'S

9 MAKING PEOPLE REALLY, REALLY SICK, DON'T STUDY THE
10 SITUATION, BRING IT BACK.

11 BECAUSE THE HEALTH OF THE CUSTOMER
12 IS PARAMOUNT, TRULY, TO EVERY OTHER CONSIDERATION
13 IN THE BUSINESS.

14 SO WHAT ARE WE TALKING ABOUT,
15 FIRESTONE TIRES, 150 FAMILIES GOT KILLED; TYLENOL,
16 SIX, SEVEN POOR FAMILIES THAT GOT SOMEONE KILLED,
17 JALISCO, 30 OR 40 POOR FAMILIES.

18 AND THEY KNEW THAT THE HEALTH OF
19 THEIR CUSTOMERS WAS THE PARAMOUNT CONSIDERATION IN
20 THEIR BUSINESS, EVEN IF THEY NEED A KICK IN THE
21 PANTS TO KNOW.

22 SO HERE'S THE PROMISE, PEOPLE'S
23 HEALTH IS PARAMOUNT TO EVERY OTHER CONSIDERATION IN
24 OUR BUSINESS.

25 ALTHOUGH THAT'S A TRUE STATEMENT,
26 WHEN THEY SAID WE ACCEPT THAT, THAT'S A LIE.

27 IT WAS A LIE ON THE DAY IT WAS
28 PRINTED. IT WAS A LIE TEN YEARS LATER, 20 YEARS

5835

1 LATER, IT'S A LIE TODAY AND IT WILL BE A LIE NEXT
2 YEAR.

3 WE BELIEVE THE PRODUCTS WE MAKE ARE
4 NOT INJURIOUS TO HEALTH. THEY KNEW BETTER. THEY
5 LIED.

6 THEY CONTINUED TO LIE.

7 WHAT IF THEY WEREN'T SURE, WHAT IF
8 THE TOBACCO INDUSTRY RESEARCH COUNCIL AND THE
9 AMERICAN TOBACCO COMPANY AND BROWN & WILLIAMSON
10 TOBACCO COMPANY, AND P. LORILLARD COMPANY, AND
11 PHILIP MORRIS COMPANY, AND RJ REYNOLDS COMPANY, AND
12 THE UNITED STATES TOBACCO COMPANY, WHAT IF ALL OF
13 THEM REALLY WEREN'T SURE YET, WHAT IF THEY REALLY
14 DIDN'T KNOW THAT THEIR PRODUCTS WERE INJURIOUS TO
15 HEALTH? THEY THOUGHT THAT, GEE, THEY MAY BE. IF
16 WE WERE TAKING ANY OTHER CONSUMER PRODUCTS IN THIS
17 COUNTRY, THINK ABOUT IT JUST FOR A SECOND,
18 TOOTHPASTE, GEE, WE GOT A BAD BATCH OF TOOTHPASTE,
19 MAYBE IT IS HURTING PEOPLE, MAYBE IT AIN'T HURTING
20 PEOPLE, SO WHAT WE WILL JUST DO IS SIT BACK AND
21 FIND OUT WHETHER OR NOT IT IS HURTING PEOPLE.

22 THAT'S NOT THE WAY THINGS RUN. IF
23 THERE IS A CHANCE IT IS HURTING PEOPLE, BRING IT
24 BACK.

25 I BELIEVE THAT'S A LIE. I BELIEVE
26 THEY KNEW THEN THAT THE PRODUCTS --

27 THE COURT: COUNSEL, YOUR BELIEF?

28 MR. PIUZE: EXCUSE ME.

5836

1 THE COURT: YES, SIR.

2 MR. PIUZE: I APOLOGIZE.

3 MY BELIEFS DON'T COUNT.

4 THE EVIDENCE THAT YOU HAVE SEEN,
5 AND A LITTLE BIT THAT YOU HAVEN'T SEEN YET, BUT I
6 AM GOING TO SHOW YOU, MOST CERTAINLY ESTABLISH THAT
7 AT A MINIMUM, THEY HAD NO RIGHT TO SAY THAT THEIR
8 PRODUCTS WERE NOT INJURIOUS TO HEALTH.

9 AND ALL OF THE EVIDENCE REALLY
10 SAYS, THEY KNEW OTHERWISE, CONTRARY, DIRECTLY.

11 LAST, WE ALWAYS HAVE AND ALWAYS
12 WILL COOPERATE CLOSELY WITH THOSE WHOSE TASK IT IS
13 TO SAFEGUARD THE PUBLIC HEALTH.

14 AND AS WE GO THROUGH SOME
15 DOCUMENTS, WE WILL SEE THAT THAT'S NOT TRUE EITHER.
16 NOT ONLY WAS THERE NO COOPERATION,
17 THEY MADE FUN OF PUBLIC HEALTH OFFICIALS. THEY
18 WENT OUT OF THEIR WAY TO CAST DOUBT ON PUBLIC
19 OFFICIALS.
20 THEIR ENTIRE STRATEGY WAS BASED
21 UPON CREATING FALSE DOUBT IN ORDER TO KEEP THEIR
22 CUSTOMERS.
23 AND SO IN 1954, THIS IS WHERE WE
24 START, RIGHT HERE.
25 PHILIP MORRIS MADE A PROMISE TWO
26 MONTHS LATER.
27 PHILIP MORRIS'S PROMISE WAS, BY
28 GEORGE WEISSMAN, THE VICE-PRESIDENT, AND HE

5837

1 PROMISED, YOU KNOW, BEFORE I TALK ABOUT WHAT HE
2 PROMISED, NONE OF THESE BIG BOARDS GO INTO
3 EVIDENCE. YOU WON'T SEE ANY OF THESE.
4 WHAT YOU WILL SEE IS THE SMALL
5 VERSIONS LIKE THIS (INDICATING).
6 AND THE IMPORTANT STUFF, WHATEVER
7 HAS BEEN HIGHLIGHTED HERE, WILL BE HIGHLIGHTED ON
8 THE SMALL VERSIONS.
9 BUT THESE BIG ONES ARE GONE.
10 I WOULD JUST LIKE TO POINT OUT FOR
11 THIS PARTICULAR DOCUMENT, THOUGH, THIS IS A SPEECH
12 THIS GUY GAVE, THERE ARE HIS HANDWRITTEN NOTES
13 THERE AND THE SPEECH WAS DELIVERED FOR THE PUBLIC
14 IN 1954.
15 AND HERE'S THE PROMISE:
16 "IF WE HAD ANY THOUGHT OR
17 KNOWLEDGE THAT IN ANY WAY WE WERE
18 SELLING A PRODUCT HARMFUL TO
19 CONSUMERS, WE WOULD STOP BUSINESS
20 TOMORROW."
21 IF THEY HAD ANY THOUGHT AT ALL, I
22 GUESS THE SCIENTISTS OVER AT PHILIP MORRIS AND THE
23 OTHER TOBACCO COMPANIES COULD READ, AND I GUESS
24 THEY HAD ACCESS TO ALL OF THIS STUFF THAT PILED UP
25 IN 1950, 1951, 1952, 1953, IF THEY DIDN'T HAVE ANY
26 THOUGHT, WHERE WERE THEY? ON VACATION?
27 SO I BELIEVE THAT WHEN THIS MAN
28 SAID, IF WE HAVE ANY THOUGHT OR KNOWLEDGE THAT OUR

5838

1 PRODUCT WAS HARMFUL TO CONSUMERS, WE WOULD STOP
2 BUSINESS TOMORROW, IS A FLAT OUT LIE. THERE WAS
3 NEVER A CHANCE IN HECK THAT THAT PROMISE WOULD BE
4 KEPT, IT IS AN ABSOLUTE, TOTAL LIE.
5 AND THERE'S A REASON, BECAUSE IF
6 THIS PROMISE WAS KEPT THAT WAS MADE IN MARCH OF
7 1954, THIS PROMISE, THAT WAS MADE IN FEBRUARY,
8 1957, COULD NOT BE KEPT.
9 THIS IS PHILIP MORRIS'S FIVE-YEAR
10 RESEARCH AND DEVELOPMENT PROGRAM. 1957.
11 "THE BASIC OBJECTIVES OF
12 PHILIP MORRIS ARE CONTINUING TO SEEK
13 AN INCREASE IN PROFITS AND IMPROVE
14 LONG-RANGE RETURN ON INVESTED FUNDS.
15 THESE OBJECTIVES CAN BE ACHIEVED
16 PRIMARILY THROUGH REDUCED OPERATING
17 COSTS, INCREASED VOLUME, INCREASED
18 PROFIT PER UNIT SALE, AND A

19 COMBINATION OF THESE ELEMENTS."
20 SO I AM TELLING YOU WHAT ANYONE
21 WOULD KNOW, THIS CANNOT CO-EXIST WITH THIS.
22 HEALTH, PROFITS, THEY CAN'T CO-EXIST THE WAY THIS
23 IS SET UP.
24 CHOSE ONE, CHOOSE HEALTH, CHOOSE
25 PROFITS.
26 LET'S SEE WHAT WAS CHOSEN.
27 SUBJECTS TO BE AVOIDED BY PHILIP
28 MORRIS RESEARCH AND DEVELOPMENT, 1980.

5839

1 SUBJECTS TO BE AVOIDED ARE
2 DEVELOPING TESTS TO FIND OUT IF SOMETHING CAUSES
3 CANCER.
4 OH, OH, 30 YEARS' WORTH OF NOTICE,
5 DR. DOLL, 30 YEARS' BEFORE SAID, TOBACCO CAUSES
6 CANCER. 30 YEARS LATER, PHILIP MORRIS SAYS, LET'S
7 AVOID ANY KIND OF TESTS TO FIGURE OUT WHAT CAUSES
8 CANCER.
9 OH, LET'S NEVER ATTEMPT TO RELATE
10 HUMAN DISEASE TO SMOKING.
11 SON OF A GUN.
12 SO THIS GUY HERE IN 1954, HE
13 PROMISED TO STOP BUSINESS TOMORROW, STOP BUSINESS
14 TOMORROW IF OUR PRODUCTS ARE HARMFUL, HIS DECEDENT
15 OVER HERE DECIDED TO PLAY OSTRICH. 30 YEARS' WORTH
16 OF OSTRICH. LET'S NEVER TRY TO FIGURE OUT WHAT
17 CAUSES CANCER. LET'S NEVER TRY TO FIGURE OUT WHAT
18 CAUSES CANCER IN HUMANS. LET'S NEVER TRY TO FIGURE
19 OUT WHAT CAUSES DISEASE IN HUMANS.
20 I WILL TELL YOU, IT IS
21 INCONCEIVABLE THAT THESE KINDS OF WORDS COULD BE
22 WRITTEN ABOUT ANY OTHER PRODUCT THAT I CAN IMAGINE.
23 FOOD PRODUCT, A DRUG PRODUCT, A
24 CONSUMER PRODUCT, ANYTHING THAT PEOPLE INHALE, EAT,
25 PUT ON THEIR SKIN, IS TESTED UP, DOWN, IN, OUT,
26 BACKWARDS, FORWARD, AS DR. FARONE TOLD YOU.
27 AUTOMOBILES, CRIBS, SOMEONE'S HIGH
28 CHAIR, ONE OF THEIR WITNESSES MENTIONED, IF A

5840

1 COMPLAINT COMES IN, YOU LOOK AT IT AND YOU SAY,
2 WHAT'S WRONG WITH IT, WHAT AM I GOING TO DO ABOUT
3 IT.
4 YOU DON'T DENY IT AND LIE ABOUT IT.
5 IT'S INCONCEIVABLE THAT THIS KIND
6 OF STUFF COULD BE SAID ABOUT ANY OTHER PRODUCT. IT
7 IS A DISGRACE THAT THIS WAS ALLOWED TO GO ON AS
8 LONG AS IT DID.
9 HOW LONG DID IT GO ON?
10 FROM THIS GUY HERE, IN 1954, YOUR
11 HEALTH IS THE MOST PARAMOUNT THING IN THE WHOLE
12 WORLD.
13 TO THIS GUY HERE WHO IS GOING TO
14 SHUT DOWN HIS BUSINESS, IF HIS PRODUCT IS HARMFUL.
15 WE GET TO THIS, AND UNFORTUNATELY,
16 THIS ISN'T THE END OF WHERE WE GET TO. BUT IN
17 1984, THIS IS 20 YEARS AFTER DR. LUDMERER, THE
18 DEFENSE EXPERT, SAID THERE WAS A BIG TIME CONSENSUS
19 IN THE MEDICAL AND SCIENTIFIC FIELDS THAT SMOKING
20 CAUSED LUNG CANCER.
21 20 YEARS LATER, THE TOBACCO
22 INSTITUTE OF WHICH PHILIP MORRIS WAS A MEMBER, WENT
23 TO THE UNITED STATES CONGRESS AND GAVE THEM THIS

24 DOCUMENT WHICH YOU ARE GOING TO HAVE RIGHT HERE,
25 AND LIED.
26 AND THE TOBACCO INSTITUTE SAID, IT
27 IS NOT KNOWN WHETHER SMOKING HAS A ROLE IN THE
28 DEVELOPMENT OF VARIOUS DISEASES. A GREAT DEAL MORE

5841

1 RESEARCH IS NEEDED TO UNCOVER THE CAUSES AND
2 MECHANISMS INVOLVED IN THE ONSET OF THESE DISEASES.
3 REMEMBER WHAT DR. CARCHMAN SAID
4 WHEN HE WAS HERE THE OTHER DAY?
5 A LOT MORE RESEARCH IS NEEDED, THEY
6 JUST STARTED IN THE YEAR 2000 TO DO RESEARCH.
7 THEY JUST STARTED TESTING MARLBORO
8 CIGARETTES IN THE YEAR 2000.
9 THEY JUST STARTED USING HUMAN
10 VOLUNTEERS OVERSEAS TO DO THIS RESEARCH IN THE YEAR
11 2000.

12 1984, THE TOBACCO INDUSTRY.
13 THE TOBACCO INSTITUTE, PHILIP
14 MORRIS IS A MEMBER. THIS IS CONSPIRACY. THIS IS
15 FRAUD. THE WORLDWIDE CAMPAIGN BEING WAGED AGAINST
16 CIGARETTE SMOKING CONTINUES. THERE ARE CALLS IN
17 MANY COUNTRIES FOR FURTHER RESTRICTIONS ON THE
18 GROWING MANUFACTURE, MARKETING AND USE OF TOBACCO.
19 IN THE UNITED STATES, BILLS TO PUT
20 STRONGER WARNING LABELS ON CIGARETTE PACKS ARE PUT
21 BEFORE CONGRESS.

22 SUCH PROPOSALS ARE BASED ON THE
23 PREMISE THAT THERE IS SUFFICIENT EVIDENCE TO PROVE
24 CIGARETTE SMOKING CAUSES CANCER OR IS A MAIN CAUSE
25 OF DISEASE.

26 THERE IS, 1984, MR. BOEKEN,
27 MR. BOEKEN, SHOULD HAVE KNOWN, BEFORE HE STARTED IN
28 1957, REMEMBER, THAT'S THEIR POSITION, THAT'S THEIR

5842

1 OFFICIAL POSITION. MR. BOEKEN SHOULD HAVE KNOWN IN
2 1957 WHEN HE WAS 13 YEARS OLD BEFORE HE STARTED
3 SMOKING.

4 IN 1984, THEY GO TO THE UNITED
5 STATES CONGRESS AND SAY, THERE IS A CIGARETTE
6 CONTROVERSY, THE CAUSAL THEORY THAT CIGARETTE
7 SMOKING CAUSES OR IS THE CAUSE OF VARIOUS DISEASES
8 WHICH IS REPORTED TO BE RELATED STATISTICALLY IS
9 JUST THAT, A THEORY.

10 AND AT THE END OF THEIR LITTLE
11 PAPER TO CONGRESS, IT SAYS, IN SUMMARY, THESE
12 EXPERTS TOOK THE POSITION THAT IT IS NOT
13 SCIENTIFICALLY POSSIBLE TO STATE THAT CIGARETTE
14 SMOKING CAUSES LUNG CANCER BECAUSE OF THE APPARENT
15 FLAWS AND THE BASIC EPIDEMIOLOGY STUDIES, THE
16 FAILURE OF ANIMAL STUDIES TO REPRODUCE LUNG CANCER
17 IN ANIMALS WITH WHOLE SMOKE AND THE RECENT WORK
18 THAT'S BEEN REPORTED.

19 THEY STILL HAVEN'T DONE THAT. IT
20 IS STILL IMPOSSIBLE, NOTHING HAS CHANGED.

21 THEY NOW ADMIT, NOTHING HAS
22 CHANGED. THERE'S NO NEW SCIENCE.

23 DR. HOSHIZAKI SAID NO NEW SCIENCE.
24 SHE SAID, YOU KNOW WHAT, I, AS A BIOLOGIST -- AND
25 THIS IS THEIR \$80,000 WITNESS -- I, AS A BIOLOGIST,
26 STUDYING THIS, WONDERED, WHY DO EIGHT OUT OF TEN
27 PEOPLE WHO SMOKE NOT GET CANCER?

28 WHY CAN'T WE PRODUCE HUMAN CANCER

1 IN ANIMALS?
2 AND I WONDERED ABOUT THIS AND THE
3 C.T.R. WONDERED ABOUT THIS AND WE STILL HAVE NEVER
4 DONE THAT.
5 AND SO THIS CONTROVERSY HERE, THIS
6 CONTROVERSY HERE, IS ANYONE LISTENING TO THIS
7 CONTROVERSY?
8 WERE THERE PEOPLE OUT THERE WHO
9 WERE ADDICTED TO SMOKE, WHO NEEDED A REASON, WHO
10 NEEDED SOMETHING TO HOLD ONTO, WHO NEEDED A REASON
11 TO BELIEVE WHAT THEY WERE DOING WAS OKAY, WHO
12 NEEDED A REASON TO SAY, YOU KNOW WHAT, MAYBE IT
13 AIN'T AS BAD AS SOME PEOPLE SAY. WELL, THAT'S WHAT
14 THE TOBACCO CONTROVERSY IS ALL ABOUT, BUYING TIME,
15 BUYING TIME. THIS IS 1984.
16 AND MR. -- I THINK WE CAN SEE 1990,
17 DO YOU SEE THAT, ON THE CAUSATION OF LUNG CANCER,
18 WE WILL SEE A FILM.
19
20 (AT THIS TIME, THE VIDEO
21 WAS PLAYED)
22
23 MR. PIUZE: WELL, HE DIDN'T UNDERSTAND
24 THE QUESTION, SEE.
25 AND I DON'T THINK IT IS BECAUSE HE
26 WAS DUMB.
27 DR. WILLIAM FARONE WASN'T DUMB
28 EITHER.

1 DR. FARONE WAS THE SECOND WITNESS
2 IN THIS TRIAL. IT WAS A LONG, LONG TIME AGO. SO
3 I'D LIKE TO REMIND YOU, PLEASE, I'D LIKE TO REMIND
4 YOU ABOUT SOME OF WHAT DR. FARONE TOLD YOU.
5 BECAUSE DR. FARONE IS AN INSIDER.
6 DR. FARONE WAS ONE OF THE TOP GUNS
7 OVER AT PHILIP MORRIS RESEARCH AND DEVELOPMENT AND
8 HE WAS ONE OF THE TOP GUNS THERE FOR EIGHT YEARS.
9 HE HAD HIS OWN DIRECTORATE AND THIS
10 LITTLE CHART HERE THAT WE SAW RECENTLY. THIS IS AS
11 OF 1979. BUT JUST SO WE CAN GET ALL THE NAMES
12 STRAIGHT WHEN WE GO THROUGH THESE DOCUMENTS HERE,
13 AS OF 1979, IN THE RESEARCH AND DEVELOPMENT
14 DEPARTMENT OF PHILIP MORRIS IN RICHMOND, VIRGINIA,
15 THE TWO TOP GUNS WERE SELIGMAN AND WAKEHAM.
16 AND THEN AS WE GO DOWN FROM
17 SELIGMAN AND WAKEHAM, WE HAVE THESE DIRECTORATES
18 HERE, AS THEY CALL THEM.
19 AND THE DIRECTORATES ARE
20 DEVELOPMENT, AND THERE'S DR. GANNON THERE;
21 RESEARCH, AND THERE'S DR. OSDENE THERE; APPLIED
22 RESEARCH, THERE'S DR. FARONE THERE; TECHNICAL
23 SERVICES, THERE'S DR. THOMSON OVER THERE.
24 SO WHEN WE HEAR LATER ON ABOUT
25 SELIGMAN AND WAKEHAM, WE ARE TALKING THE TOP OF THE
26 TOP OF THE TOP OF THE HEAP OVER HERE.
27 AND WHEN WE ARE TALKING ABOUT
28 OSDENE AND FARONE, WE ARE TALKING ABOUT THE NEXT

1 LAYER DOWN. THESE ARE HEAVY DUTY, IMPORTANT,
2 HIGH-RANKING SCIENTISTS AT PHILIP MORRIS.
3 HERE'S WHAT DR. FARONE HAD TO SAY
4 TO US A LONG TIME AGO.

5 MR. LEITER: MAY I HAVE A PAGE NUMBER,
6 PLEASE.
7 MR. PIUZE: EXCUSE ME?
8 MR. LEITER: MAY I HAVE A PAGE NUMBER
9 PLEASE. I AM SORRY.
10 MR. PIUZE: SURE. 1464.
11 MR. LEITER: THANK YOU.
12 MR. PIUZE: I HAVE NEVER USED ONE OF
13 THESE MACHINES SO MUCH IN MY ENTIRE LIFE AND I HAVE
14 TRIED A LOT OF CASES. AND I APOLOGIZE THAT I AM
15 STANDING OVER AT THIS MACHINE SO MUCH AND NOT
16 STANDING WITH YOU. I THINK IT IS AS IMPORTANT THAT
17 YOU LOOK AT THE WORDS AND MORE IMPORTANT WHEN YOU
18 LOOK AT THE WORDS.
19 FORGIVE ME. HERE I GO AGAIN.
20 OKAY. THIS IS HOW WE STARTED OFF
21 WITH DR. FARONE.
22 HE WAS THE DIRECTOR OF APPLIED
23 RESEARCH. HE WAS ASKED TO LEARN AS MUCH AS HE
24 COULD ABOUT CIGARETTE AND TOBACCO TECHNOLOGY AS HE
25 COULD.
26 HE LEARNED EVERYTHING FROM THE
27 GROUND UP AND THEN AFTER A YEAR, EXCUSE ME, AND HE
28 DID THAT SO HE COULD TRY TO HELP MAKE A PRODUCT

5846

1 SAFER.
2 AND FOR THE NEXT SEVEN YEARS, HE
3 SUPERVISED A WIDE RANGE OF DIFFERENT TYPES OF
4 SCIENTISTS WORKING ON CIGARETTE TECHNOLOGY. AND
5 HERE'S THE PART WHERE I WANT TO START RIGHT HERE,
6 BUT BEFORE I DO, I'D LIKE TO REMIND YOU OF A COUPLE
7 THINGS.
8 THIS GUY HAS BEEN ON "60 MINUTES" A
9 COUPLE TIMES. HE'S BEEN ON THE CANADIAN
10 BROADCASTING SYSTEM. HE'S BEEN ON THE BRITISH
11 BROADCASTING SYSTEM. HE'S BEEN A CONSULTANT TO THE
12 F.D.A., DEPARTMENT OF JUSTICE AND SEVER OTHER
13 UNITED STATES AGENCIES FOR INVOLVEMENT IN TOBACCO
14 RELATED ISSUES OVER THE COURSE OF THE LAST FIVE OR
15 SIX YEARS FOR REAL.
16 THIS GUY IS THE INSIDER OF PHILIP
17 MORRIS.
18 THIS GUY IS THE GUY WHO, UP UNTIL
19 THE YEAR 2001, NEVER CHARGED A PENNY FOR ANY OF HIS
20 TIME IN GOING AROUND THE COUNTRY TO TESTIFY OR TO
21 HELP THE GOVERNMENT OR TO HELP CBS OR "60 MINUTES"
22 OR WHATEVER, NEVER CHARGED A PENNY, UNTIL THIS
23 YEAR.

24 WHY NOT?
25 HE DIDN'T CHARGE A PENNY BECAUSE IN
26 HIS WORDS, HE FELT RESPONSIBLE FOR WHAT HAS
27 HAPPENED.

28 AND SINCE HE'S LEFT THAT COMPANY IN

5847

1 1984, ACCORDING TO WHAT HE TOLD YOU HERE, MORE
2 PEOPLE HAVE DIED IN THIS ONE COUNTRY ALONE,
3 PREVENTABLE SMOKING-RELATED ILLNESS THAN DIED IN
4 HITLER'S GERMANY.

5 THAT'S AN ASTOUNDING NUMBER. AND
6 HE FEELS PARTIALLY RESPONSIBLE. AND SO HE HAS, UP
7 UNTIL THIS YEAR, NEVER CHARGED, HAS GONE AROUND THE
8 COUNTRY FOR FREE, TO TRY TO RAISE PEOPLE'S
9 CONSCIOUSNESS AND TRY TO GET THE WORD OUT ABOUT

10 WHAT REALLY, HONEST TO GOD HAPPENED AND WHAT'S
11 GOING ON.
12 IN 1976, WHEN YOU WERE AT -- THE
13 YEAR WE STARTED, IN 1976, WHEN YOU WERE AT PHILIP
14 MORRIS, WAS IT A SECRET THERE AMONG SCIENTISTS THAT
15 THE CIGARETTES THEY WERE MAKING CAUSED LUNG CANCER?
16 NO.
17 REMEMBER WHEN WE JUST HEARD FROM
18 THE C.E.O. OF THAT CORPORATION, UNDER OATH, IN
19 FRONT OF CONGRESS, IN 1994, 18 YEARS LATER?
20 IN 1976, WAS IT A SECRET AMONG
21 SCIENTISTS THERE THAT CIGARETTES WERE ADDICTIVE?
22 NO.
23 AND WE ARE GOING TO TALK ABOUT
24 ADDICTION LATER. BUT I KNOW YOU REMEMBER, THE SAME
25 MR. CAMPBELL WAS ONE OF THOSE SEVEN STOOGES WHO
26 SWORE TO TELL THE TRUTH AND WHEN THE MICROPHONE
27 CAME DOWN IT WAS NO -- IS IT ADDICTIVE, NO, NO, NO,
28 NO, NO, NO, NO.

5848

1 BUT IN 1976, AT PHILIP MORRIS,
2 AMONG THE SCIENTISTS THERE, IT WAS NOT A SECRET.
3 YOU KNOW WHAT? DO WE HAVE A CROSS-
4 CHECK ON THAT? THIS IS ONE OF MY FAVORITE EXHIBITS
5 IN THE WHOLE TRIAL.
6 CAN WE PROVE WHAT DR. FARONE SAID
7 IS TRUE AT PHILIP MORRIS? HERE, CHECK THIS OUT.
8 THIS IS FEBRUARY 19, 1969.
9 SO THIS IS SEVEN YEARS BEFORE
10 DR. FARONE GOT THERE.
11 AND HERE'S A MEMO. LOOK AT WHAT WE
12 ARE TALKING ABOUT. WAKEHAM, DUNN, THIS IS CALLED
13 JET'S MONEY OFFER.
14 "I WOULD BE MORE CAUTIOUS IN
15 USING THE PHARMIC-MEDICAL MODEL - DO
16 WE REALLY WANT TO TAUT CIGARETTE SMOKE
17 AS A DRUG? IT IS, OF COURSE, BUT
18 THERE ARE DANGEROUS F.D.A.
19 IMPLICATIONS TO HAVING SUCH
20 CONCEPTUALIZATION GO BEYOND THESE
21 WALLS."
22 AND SO IN 1969, THESE PEOPLE WHO
23 ARE TOP GUNS THERE KNOW THEY ARE DEALING DRUGS.
24 AND THEY ARE NOT DEALING DRUGS LIKE SQUIB DOES OR
25 LIKE UPJOHN DOES OR LIKE MERK DOES, WHERE THEY ARE
26 REGULATED AND THERE ARE PEOPLE LOOKING OVER THEIR
27 SHOULDERS AND TESTING ALL THIS STUFF BECAUSE THEY
28 ARE DRUGS. THEY ARE DEALING DRUGS WITH NO

5849

1 OVERSIGHT.
2 AND I AM GOING TO SAY LATER, AND I
3 WILL SAY IT NOW, THE WORLD'S BIGGEST DRUG DEALER IS
4 SOMETHING THAT PUTS THE COLUMBIAN CARTEL TO SHAME
5 IS PHILIP MORRIS. HAS BEEN.
6 "SO DR. FARONE, IN 1976, WAS
7 IT A SECRET AMONG THE SCIENTISTS THERE
8 THAT CIGARETTES WERE ADDICTIVE?
9 "NO, IT WASN'T.
10 "IN 1976, WHEN YOU STARTED
11 WITH THE COMPANY, DID YOU EVER HEAR
12 ANY SCIENTIST FROM PHILIP MORRIS EVER
13 SAY THAT HE OR SHE DID NOT BELIEVE
14 THAT THE PRODUCTS, THE CIGARETTES,

15 CAUSED CANCER?
16 "DID NOT.
17 "WERE YOU AWARE DURING THE
18 TIME THAT YOU WERE AT PHILIP MORRIS
19 THAT THE PUBLIC STATEMENTS OF THE
20 CORPORATION FOR PUBLIC DISSEMINATION
21 WERE AT ODDS WITH WHAT THE SCIENTISTS
22 EMPLOYED BY THE COMPANY THOUGHT AS FAR
23 AS THE FACT THAT ITS PRODUCTS CAUSED
24 LUNG CANCER?
25 "VERY MUCH SO."
26 VERY MUCH SO.
27 1976, 1984, LIES.
28 BETWEEN 1976, THE YEAR HE STARTED,

5850

1 AND THIS YEAR, JUST A COINCIDENCE, THE YEAR HE LEFT
2 AND THE YEAR THIS THING WAS PUT BEFORE CONGRESS,
3 THAT'S AN EIGHT-YEAR SPAN, 400,000 PEOPLE, TIMES
4 FOUR, OVER THREE MILLION DEAD PEOPLE IN THIS
5 COUNTRY FROM TOBACCO DURING THAT TIME THAT THEY
6 LIED ABOUT WHETHER OR NOT IT WAS DANGEROUS.
7 IT'S AN AMAZING THING, IT'S -- THEY
8 SAY, SO WHAT? SO WHAT IF WE LIED?
9 SO WHAT IF WE DIDN'T FIGURE IT OUT
10 RIGHT AWAY?
11 SO WHAT ARE YOU GOING TO DO ABOUT
12 IT?
13 YOU CAN'T DO ANYTHING ABOUT IT.
14 MR. BOEKEN'S TOUGH LUCK. HE SHOULD
15 HAVE KNOWN. HE SHOULD HAVE KNOWN WHEN HE WAS 13.
16 HE SHOULD HAVE KNOWN WHEN HE WAS 13 YEARS OLD.
17 BUT IF HE DIDN'T, HE SHOULD HAVE
18 KNOWN WHEN HE WAS 20.
19 HE SHOULD HAVE KNOWN WHEN HE WAS
20 30. HE SHOULD HAVE KNOWN WHEN HE WAS 40.
21 AND IF HE SHOULD HAVE KNOWN THAT,
22 TOUGH LUCK FOR HIM. IT DOESN'T MATTER THAT WE LIED
23 OR CHEATED OR WERE DISGUSTING, TOUGH LUCK FOR HIM.
24 AND BY THE WAY, THIS LAST WITNESS
25 FOR PHILIP MORRIS, HE SAID, I AM GOING TO ADOPT
26 THIS PART OF WHAT HE SAID, I DISAGREE WITH IT FOR
27 REASONS THAT I WILL DISCUSS LATER, BUT I AM GOING
28 TO ADOPT IT FOR NOW. YEAH, MR. BOEKEN WAS JUST

5851

1 LIKE FIVE MILLION OTHER PEOPLE OR 10 MILLION OTHER
2 PEOPLE OR 20 MILLION OTHER PEOPLE OR 40 MILLION
3 OTHER PEOPLE THERE ARE OUT THERE WHO ARE ADDICTED
4 TO NICOTINE AND WHO LISTENED TO THIS, HE'S NO
5 DIFFERENT THAN THAT.
6 IF HE REALLY, REALLY, REALLY,
7 WANTED TO QUIT, IF HE REALLY, REALLY, REALLY,
8 WANTED TO QUIT, HE COULD HAVE QUIT.
9 AND YOU KNOW WHAT, I TOLD YOU IN
10 OPENING STATEMENT, AND I WILL SAY IT AGAIN, IF YOU
11 PUT A GUN TO SOMEONE'S HEAD, YOU GIVE THEM ALL THE
12 FACTS, IF YOU THREATEN THEM, IF YOU TELL THEM, THEY
13 CAN QUIT.
14 AND I WILL TELL YOU ONE OTHER THING
15 TOO NOW, DR. SAM HAMMAR, PATHOLOGIST, LUNG
16 SPECIALIST, CONSULTANT TO THE WORLD HEALTH
17 ORGANIZATION, FORMER PROFESSOR, DR. FEINGOLD CALLED
18 HIM ONE OF THE TOP FIVE LUNG PATHOLOGISTS IN THE
19 WORLD, SAID THAT THIS TUMOR THAT MR. BOEKEN HAD

20 WHICH WAS DIAGNOSED IN OCTOBER OF THE 1999, HAD
21 BEEN GROWING FOR TEN YEARS.
22 THAT IT STARTED TEN YEARS BEFORE.
23 AND SO THAT'S UNCONTESTED
24 TESTIMONY. BY THE WAY, ALL OF THE TESTIMONY IN
25 THIS TRIAL ABOUT WHAT KIND OF CANCER MR. BOEKEN
26 HAD, ADENOCARCINOMA, WHETHER OR NOT IT WAS CAUSED
27 BY TOBACCO SMOKING, IT'S ALL UNCONTESTED. THERE
28 WAS NO EVIDENCE PRESENTED HERE TO THE CONTRARY.

5852

1 AND IF YOU ARE WAITING, YOU WAITED IN VAIN.
2 BUT THIS PIECE OF UNCONTESTED
3 TESTIMONY IS IMPORTANT TO REMEMBER, BECAUSE
4 MR. BOEKEN, UNFORTUNATELY FOR HIM, ALTHOUGH HE
5 WASN'T GOING TO KNOW IT FOR TEN YEARS, HE HAD IT IN
6 1989.

7 BECAUSE OF THE TIME IT TAKES FOR
8 CELL DIVISION AND CELL DIVISION AND DUPLICATION AND
9 ON AND ON AND ALL OF THESE TECHNICAL THINGS THAT
10 DR. HAMMAR DISCUSSED, ONE AND A HALF TO TWO
11 CENTIMETER TUMOR THAT WAS DISCOVERED IN OCTOBER OF
12 1999, STARTED IN 1989.

13 SO I'D LIKE YOU TO KEEP THAT IN
14 MIND AS WE GO THROUGH SOME OF THESE TIME LINES
15 HERE, PLEASE.

16 BACK TO DR. FARONE.
17 JUDGE, I HAVE NO CLUE ABOUT BREAKS
18 OR ANY OTHER THINGS.

19 THE COURT: 10:30.

20 MR. PIUZE: 10:30?

21 THE COURT: YES, SIR.

22 MR. PIUZE: FINE.

23 BACK TO DR. FARONE. YOU KNOW, I AM
24 GOING TO LEAVE HIM SITTING FOR A WHILE.

25 WHEN WE TALK WITH DR. FARONE HERE,
26 IT IS GOING TO BE WHY ALL OF THE TESTS THAT EXISTED
27 ON REAL PRODUCTS WHICH PHILIP MORRIS DENIES EVER
28 OCCURRING, WHY THOSE TESTS WERE DONE IN GERMANY,

5853

1 WHY THOSE TESTS WERE DONE NOT ON U.S. SOIL, WHAT
2 THE GENTLEMEN'S AGREEMENT WAS, AND WHY DOCUMENTS
3 WERE REGULARLY DESTROYED BY PHILIP MORRIS.

4 BUT LET'S LEAVE DR. FARONE FOR A
5 WHILE. I WANT TO GO ON TO A SLIGHTLY DIFFERENT
6 TOPIC.

7 IS TOBACCO ADDICTIVE?

8 THIS IS ANOTHER ONE OF THESE
9 REVELATIONS ON BEHALF OF PHILIP MORRIS. THEY
10 FIGURED IT OUT JUST IN TIME FOR THIS TRIAL. THEY
11 FIGURED IT OUT JUST AT THE END OF 2000, THAT
12 TOBACCO WAS ADDICTIVE.

13 THEY FIGURED OUT THAT TOBACCO WAS
14 ADDICTIVE AT THE SAME TIME THEY FIGURED OUT THAT
15 TOBACCO CAUSED LUNG CANCER.

16 BUT LET'S SEE WHAT HAPPENED LEADING
17 UP TO THEIR REVELATION, PLEASE.

18 I HAVE ALREADY TOLD YOU ABOUT THAT
19 "WE MAKE A DRUG, BUT LET'S NOT TELL ANYONE ABOUT
20 IT" MEMO.

21 HERE'S SOMETHING FROM SEPTEMBER OF
22 1980. THIS IS A PHILIP MORRIS MEMORANDUM.

23 PART OF THIS HAS BEEN TAKEN OUT.
24 IT DOESN'T MATTER. THE PART THAT STAYS IS MORE

25 IMPORTANT.
26 "THE ENTIRE MATTER OF
27 ADDICTION IS THE MOST POTENT WEAPON A
28 PROSECUTING ATTORNEY CAN HAVE IN A
5854
1 LUNG CANCER CIGARETTE CASE. WE CANNOT
2 DEFEND CONTINUED SMOKING AS, 'FREE
3 CHOICE,' IF THE PERSON WAS ADDICTED."
4 WELL, NOW, IF PHILIP MORRIS
5 THOUGHT, IN 1980 THAT PEOPLE LIKE ME MIGHT BE
6 STANDING BEFORE PEOPLE LIKE YOU AND SAYING MAYBE
7 MR. BOEKEN'S DECISIONS WERE AFFECTED BY THE FACT
8 THAT THIS WAS A HIGHLY ADDICTIVE DRUG, THEY
9 ACKNOWLEDGE THAT WOULDN'T BE A VERY GOOD THING FOR
10 THEM.
11 AND SO IN 1980, THEY DIDN'T ADMIT
12 IT WAS A HIGHLY ADDICTIVE DRUG.
13 AND IN 1994, CAN WE SEE WHAT THEY
14 HAD TO SAY ABOUT THAT, PLEASE.
15
16 (AT THIS TIME THE VIDEO
17 WAS PLAYED)
18
19 MR. PIUZE: HERE, THIS IS WHY THEY
20 BELIEVE NICOTINE IS NOT ADDICTIVE.
21 I BELIEVE THAT THEY ARE DISGUSTING.
22 AND I BELIEVE --
23 MR. LEITER: OBJECTION.
24 THE COURT: COUNSEL.
25 MR. PIUZE: I APOLOGIZE. I AM SORRY. I
26 AM SORRY. SORRY.
27 THEY ARE DISGUSTING. AND THE
28 COMPANIES THEY HAD, THAT PUT THEM OUT FRONT ARE
5855
1 EQUALLY DISGUSTING.
2 NICOTINE ISN'T ADDICTIVE, NICOTINE
3 ISN'T ADDICTIVE, NICOTINE ISN'T ADDICTIVE, NICOTINE
4 ISN'T ADDICTIVE.
5 HERE'S 1959, 1959.
6 THIS IS A PHILIP MORRIS INTERNAL
7 DOCUMENT. "WHY DO PEOPLE SMOKE."
8 REASON NUMBER THREE "ADDICTION."
9 HERS'S ANOTHER ONE. THIS IS FROM
10 DUNN, PHILIP MORRIS RESEARCH SCIENTIST IN RICHMOND,
11 VIRGINIA.
12 LET'S SEE WHAT HE HAS TO SAY ABOUT
13 THIS. HERE'S WHERE HE RANKED SMOKING.
14 "AS WITH EATING AND
15 COPULATING, SO IT IS WITH SMOKING.
16 THE PHYSIOLOGICAL EFFECT SERVES AS THE
17 PRIMARY INCENTIVE; ALL OTHER
18 INCENTIVES ARE SECONDARY.
19 "THE MAJORITY OF CONFEREES
20 WOULD GO ANY FURTHER AND ACCEPT THE
21 PROPOSITION THAT NICOTINE IS THE
22 ACTIVE CONSTITUENT OF CIGARETTE SMOKE.
23 WITHOUT NICOTINE, THE ARGUMENT GOES,
24 THERE WOULD BE NO SMOKING. SOME
25 STRONG EVIDENCE CAN BE MARSHALLED TO
26 SUPPORT THIS ARGUMENT.
27 "NO ONE HAS EVER BECOME A
28 CIGARETTE SMOKER BY SMOKING CIGARETTES
5856

1 WITHOUT NICOTINE IN THEM."
2 "MOST OF THE PHYSIOLOGIC
3 RESPONSES TO INHALED SMOKE HAVE BEEN
4 SHOWN TO BE NICOTINE RELATED.
5 "DESPITE MANY LOW NICOTINE
6 BRAND ENTRIES INTO THE MARKETPLACE,
7 NONE OF THEM HAVE CAPTURED A
8 SUBSTANTIAL SEGMENT OF THE MARKETS.
9 "WHY THEN IS THERE NOT A
10 MARKET FOR NICOTINE, PER SE, TO BE
11 EATEN, SUCKED, DRUNK, INJECTED,
12 INSERTED, OR INHALED AS A PURE
13 AEROSOL? THE ANSWER IS, AND I FEEL
14 QUITE STRONGLY ABOUT THIS, IS THAT THE
15 CIGARETTE IS, IN FACT, AMONG THE MOST
16 AWE-INSPIRING EXAMPLES OF INGENUITY OF
17 MAN. LET ME EXPLAIN MY CONVICTION.
18 "THE CIGARETTE SHOULD BE
19 CONCEIVED NOT AS A PRODUCT BUT AS A
20 PACKAGE. THE PRODUCT IS NICOTINE.
21 THE CIGARETTE IS BUT ONE OF THE MANY
22 PACKAGE LAYERS. THERE IS THE CARTON
23 WHICH CONTAINS THE PACK, WHICH
24 CONTAINS THE CIGARETTE, WHICH CONTAINS
25 THE SMOKE. THE SMOKE IS THE FINAL
26 PACKAGE. THE SMOKER MUST STRIP OFF
27 ALL THESE PACKAGE LAYERS TO GET THAT
28 WHICH HE SEEKS.

5857

1 "BUT CONSIDER FOR A MOMENT
2 WHAT 200 YEARS OF TRIAL AND ERROR
3 DESIGNING HAS BROUGHT IN THE WAY OF
4 NICOTINE PACKAGING.
5 "THINK OF THE CIGARETTE AS A
6 DISPENSER FOR A DOSE UNITS OF
7 NICOTINE."
8 ONE MORE, IF I COULD, YOUR HONOR,
9 PLEASE.
10 THIS IS 1980 AND THIS IS BEFORE
11 THOSE SEVEN STOOGES THAT YOU JUST HEARD.
12 AND THE 1980, DR. SELIGMAN,
13 DR. OSDENE, PHILIP MORRIS, RICHMOND, VIRGINIA,
14 SAYS:
15 "THIS PROGRAM INCLUDES BOTH
16 BEHAVIOURAL EFFECTS AS WELL AS
17 CHEMICAL INVESTIGATION. MY REASON FOR
18 THIS HIGH PRIORITY IS THAT I BELIEVE
19 THE THING WE SELL MOST IS NICOTINE."
20 AND IF 10:30 IS THE TARGET, THAT'S
21 A GOOD TIME FOR ME TOO.
22 THE COURT: ALL RIGHT, LADIES AND
23 GENTLEMEN, IT'S NOW A LITTLE BIT PAST 10:30. WE
24 WILL GET BACK TOGETHER AT TEN MINUTES TO 11:00, IF
25 EVERYONE WOULD PLEASE TRY TO BE PROMPT IN GETTING
26 BACK HERE AND LET'S GET STARTED ON TIME.
27 THANK YOU.
28 /// /// ///

5858

1 (AT THIS TIME, A RECESS
2 WAS TAKEN.)
3
4 (THE FOLLOWING PROCEEDINGS
5 WERE HELD IN OPEN COURT IN

6 THE PRESENCE OF THE JURY.)
7
8 THE COURT: OUR JURY PANEL IS WITH US.
9 COUNSEL ARE PRESENT AS WELL.
10 MR. PIUZE.
11 MR. PIUZE: THANK, YOUR HONOR.
12 THE COURT: YOUR JURY.
13
14 OPENING ARGUMENT (CONTINUED)
15
16 BY MR. PIUZE:
17 Q. NOW, I AGAIN WANT TO THANK YOU ALL
18 FOR YOUR CONTINUED ATTENTION, BECAUSE I KNOW WHAT
19 WE HAVE SEEN ALMOST ALL OF THE STUFF BEFORE AND I
20 KNOW THAT YOU HAVE SEEN SOME OF THIS STUFF ON
21 MULTIPLE OCCASIONS.
22 BUT AFTER HOWEVER LONG WE HAVE BEEN
23 HERE, A COUPLE MONTHS, AND SOME OF THE IMPLICATIONS
24 OF THIS CASE, I THINK THAT IT'S A VALID USE OF TIME
25 JUST TO SHOW THESE THINGS AGAIN AND THEY CAN SPEAK
26 IN MANY INSTANCES WAY BETTER THAN I CAN FOR WHAT IS
27 GOING ON.
28 I AM GOING TO STOP TALKING ABOUT
5859
1 NICOTINE, SORT OF LIKE THIS.
2 DR. OSDENE TELLS DR. SELIGMAN IN
3 1980, THAT THE THING THAT WE SELL MOST IS NICOTINE.
4 IN 1969, DR. DUNN SAYS TO
5 DR. WAKEHAM, OR VICE-VERSA, I AM NOT POSITIVE, "DO
6 WE REALLY WANT TO TAUT CIGARETTE SMOKE AS A DRUG?
7 IT IS, OF COURSE. BUT THERE ARE DANGEROUS F.D.A.
8 IMPLICATIONS TO HAVING SUCH CONCEPTUALIZATION GO
9 BEYOND THESE WALLS."
10 AND I AM JUMPING BACK TO 1980. I
11 BELIEVE THIS IS FROM THE TRADE ORGANIZATION, THE
12 C.T.R. -- EXCUSE ME, FROM THE T.I., TOBACCO
13 INSTITUTE.
14 "THE ENTIRE MATTER OF
15 ADDICTION IS THE MOST POTENT WEAPON A
16 PROSECUTING ATTORNEY CAN HAVE IN A
17 LUNG CANCER/CIGARETTE CASE. WE CAN'T
18 DEFEND CONTINUED SMOKING AS FREE
19 CHOICE IF THE PERSON IS ADDICTED."
20 AND SO, WHEN THOSE GUYS GOT UP,
21 SEVEN OF THEM, AND TOLD THE UNITED STATES CONGRESS
22 THAT TOBACCO WASN'T ADDICTIVE, IT WASN'T JUST CAUSE
23 THEY FELT LIKE IT, AND IT WASN'T JUST CAUSE THEY
24 DIDN'T FEEL LIKE ADMITTING IT. IT WAS BECAUSE THIS
25 WAS PART OF A WAY, WAY, WAY BIGGER AND MORE
26 IMPORTANT THING. BECAUSE YOU SEE, 14 YEARS BEFORE
27 THAT, IN 1980, AND BACK IN 1969, THEY HAD DISCUSSED
28 THE FACT THAT IF NICOTINE WAS REALLY ADDICTIVE,
5860
1 IT'S GOING TO BE TREATED LIKE A DRUG, THE F.D.A. IS
2 GOING TO BE THERE, THEY DON'T WANT THE F.D.A.
3 THERE, AND IF NICOTINE IS REALLY ADDICTIVE, LAWYERS
4 ARE GOING TO BE ABLE TO SAY, YOU KNOW WHAT, WHEN
5 PHILIP MORRIS AND THE OTHER TOBACCO COMPANIES SAY
6 TOUGH LUCK, CHARLIE, TOUGH LUCK, SUSIE, TOUGH LUCK,
7 MR. BOEKEN, TOUGH LUCK, FIVE MILLION PEOPLE, TOUGH
8 LUCK, TEN MILLION PEOPLE, TOUGH LUCK, YOU SHOULD
9 HAVE STOPPED, WELL, IF WE ADMIT, IT'S ADDICTIVE.
10 THAT'S GOING TO SCREW UP OUR DEFENSE.

11 SO WE CAN'T ADMIT IT'S ADDICTIVE.
12 WE CAN'T ADMIT IT'S ADDICTIVE BECAUSE THE F.D.A.
13 WILL BE THERE. AND WE CAN'T ADMIT IT'S ADDICTIVE
14 BECAUSE IT IS GOING TO SCREW UP OUR DEFENSE IN
15 COURT.

16 SO IN 1994 WHEN THOSE SEVEN GUYS
17 LIED, IT WASN'T JUST FOR THE HECK OF IT. THERE WAS
18 A REASON FOR IT.

19 HERE, 2001, AND MS. MERLO TOLD US
20 THAT THIS ACTUALLY WENT UP ON THE PHILIP MORRIS WEB
21 SITE AT THE VERY TAIL END OF 2000.

22 THIS IS FOR 2001.

23 "PHILIP MORRIS AGREES WITH THE
24 OVERWHELMING MEDICAL AND SCIENTIFIC CONSENSUS THAT
25 CIGARETTE SMOKING IS ADDICTIVE."

26 AND SO THE QUESTION IS, WHAT TOOK
27 THEM SO LONG, DID THEY DO THIS VOLUNTARILY, OR DID
28 THEY ADMIT IT'S ADDICTIVE FOR THE SAME REASON SOME

5861

1 CROOK OR SOME MURDERER WHO'S CAUGHT DEAD TO RIGHTS,
2 ALL OF A SUDDEN, HAS A CHANGE OF HEART, AND SAYS,
3 OH, I HAVE REFORMED, NOW THAT YOU GOT ME, NOW THAT
4 YOU'RE TALKING TO ME, NOW THAT YOU PROVED I DID IT,
5 OH, MY LORD, I AM REFORMED, SO PLEASE DON'T PUNISH
6 ME TOO MUCH.

7 AND MERLE SAID, WELL, YOU KNOW,
8 MAYBE WE ARE A LITTLE SLOW IN FIGURING THESE THINGS
9 OUT. BUT WE HAVE HAD A CHANGE OF POSITION. THEY
10 HAVE HAD A CHANGE OF POSITION. IT'S LIKE THE
11 HEALTH OF MILLIONS OF MILLIONS OF MILLIONS OF
12 PEOPLE IS A MATTER HAVE THEIR GIVEN POSITION IN A
13 GIVEN YEAR OR A GIVEN MONTH. IT'S JUST A
14 NEGOTIATING THING. IT IS SOMETHING TO BE CHANGED,
15 WE CHANGED OUR POSITION.

16 HERE'S ANOTHER CHANGE IN POSITION.
17 THIS CHANGE IN POSITION PROBABLY SHOULD HAVE BEEN
18 MADE THE VERY YEAR THAT 13-YEAR-OLD RICHARD BOEKEN
19 PICKED UP HIS FIRST CIGARETTE.

20 BUT UNFORTUNATELY, AND ABOMINABLY
21 THIS CHANGE IN POSITION DIDN'T HAPPEN UNTIL AROUND
22 THAT THE DOCTOR TOLD HIM THAT HIS LUNG CANCER HAD
23 METASTASIZED TO HIS BRAIN.

24 AND SO THEY WERE A LITTLE BIT LATE
25 IN THIS CHANGE OF POSITION. AND WE ARE GOING TO
26 TALK ABOUT THE REASONS FOR THIS CHANGE IN POSITION,
27 BUT HERE IT IS.

28 PHILIP MORRIS AGREES WITH THE

5862

1 OVERWHELMING MEDICAL AND SCIENTIFIC CONSENSUS THAT
2 CIGARETTE SMOKING CAUSES LUNG CANCER, HEART
3 DISEASE, EMPHYSEMA, OTHER SERIOUS DISEASES IN
4 SMOKERS.

5 "THERE IS NO SAFE CIGARETTE."

6 SO HERE'S A CHANGE IN PLAN. OKAY,
7 WELL, NOW, AFTER 50 YEARS, WE ADMIT IT. BUT WE
8 REALLY CAN'T DO ANYTHING ABOUT IT. SO IT TOOK US A
9 LITTLE LONG TO ADMIT IT BUT WE CAN'T DO ANYTHING
10 ABOUT IT.

11 AND I HAVE TWO COMMENTS FOR THAT.
12 I WILL SAY THEM NOW.

13 PHILIP MORRIS MADE A CIGARETTE.
14 NOT THIS CIGARETTE, THIS IS THE
15 FRANCHISE, THIS IS 30-STORY ADVERTISEMENTS IN

16 HONG KONG, 30-STORY MARLBORO ADVERTISING.
17 THIS IS THE GENESIS OF AN EMPIRE.
18 PHILIP MORRIS MADE A CIGARETTE
19 CALLED CARLTON. DR. FARONE WAS THERE. DR. FARONE
20 TOLD YOU ABOUT IT. AND ONE OF THE THINGS HE SAID
21 IN TESTIMONY IN THIS TRIAL WAS HE BELIEVES THERE'S
22 A SAFE CIGARETTE. BUT WE HAD A CHANGE IN
23 POSITION -- WHAT WOULD HAPPEN, BY THE WAY, IF
24 PHILIP MORRIS REALLY, REALLY PUSHED -- DID I SAY
25 CARLTON WHEN I SHOULD HAVE SAID CAMBRIDGE AGAIN?
26 MR. CARLTON: YES.
27 MR. PIUZE: CARLTON ON MY MIND.
28 WHAT WOULD HAPPEN IF PHILIP MORRIS

5863

1 REALLY, REALLY PUSHED CAMBRIDGE, WHAT WOULD HAPPEN
2 IF PHILIP MORRIS BUT SOME NICOTINE IN THE FILTER,
3 WHICH CAN BE DONE.
4 WHAT WOULD HAPPENED IF PHILIP
5 MORRIS PUT SOME FLAVOR IN THE FILTER?
6 WHAT WOULD HAPPEN IF THE NICOTINE
7 DIDN'T COME OUT OF THE SMOKE WHICH CAN KILL YOU
8 DEAD. THEY FINALLY FIGURED THAT PART OUT.
9 WELL, ONE THING THAT MIGHT HAPPEN
10 IS, THE FRANCHISE, THE CORNERSTONE, THE LARGEST
11 CONSUMER PRODUCT COMPANY THIS THE WORLD, NOT
12 COCA-COLA, WOULD BE CHALLENGED.
13 IN OTHER WORDS, THEY WOULD BE
14 ATTACKING THEIR MEAL TICKET. DR. FARONE SAID,
15 YEAH, YOU CAN HAVE A SAFE CIGARETTE, AND THERE'S
16 ONE GRAPH THAT I HOPE THAT I REMEMBER SOME TIME
17 TODAY TO PUT UP THERE AND IT'S THE GRAPH OF TAR
18 REDUCTION.
19 AND THIS WAS DONE BY DR. WHIDBY.
20 AND IT SHOWED THE REDUCTION OF TAR
21 FROM THIS BIG HUGE THING IN 19, WHATEVER IT WAS, 50
22 SOMETHING, DOWN TO HERE, 1980 OR '90, WHATEVER IT
23 WAS. AND I ASKED HIM TO DRAW -- I ASKED HIM TO
24 DRAW OUT CAMBRIDGE ON THE CHART THERE. AND HE GOT
25 DOWN LIKE THIS ANDREW CAMBRIDGE DOWN THERE AND THEN
26 APOLOGIZED MAYBE HE DREW IT TOO HIGH.
27 THAT'S THE BAD STUFF, THAT'S THE
28 STUFF THAT KILLS PEOPLE, THAT'S THE STUFF THAT

5864

1 PHILIP MORRIS WAS MARKETING MADE, WAS ON THE
2 MARKET.
3 BUT ANYWAY, DR. FARONE SAYS, HE
4 THINKS THERE'S A SAFE CIGARETTE. LET'S COME BACK
5 HERE. I WILL GET TO THE MAIN THRUST.
6 OKAY, IN 2001, PHILIP MORRIS
7 DECIDES THAT THEY AGREE THAT CIGARETTE SMOKING
8 CAUSES LUNG CANCER.
9 AND I WANT TO SORT OF TRACE FOR
10 YOU, IF I COULD, A TORTIOUS LITTLE ROUTE, HOW
11 PHILIP MORRIS GOT THERE, AND I WANT TO INCLUDE IN
12 THIS HOW PHILIP MORRIS IS A MEMBER OF A CARTEL, A
13 CONSPIRACY, TALKED THROUGH THE C.T.R., THE
14 T.I.R.C., THE T.I., IN ORDER TO GIVE MISINFORMATION
15 AND DISINFORMATION AND FLAT OUT LIES, COUNTER-
16 INFORMATION, TO US.
17 BECAUSE DON'T FORGET, HEY, IT
18 DOESN'T MATTER IF WE LIED OR CHEATED OR STOLE,
19 MR. BOEKEN COULD HAVE DONE WHATEVER HE WANTED, JUST
20 LIKE SALLY SMITH, JOE JONES, ANYONE ELSE AND IT'S

21 THEIR TOUGH LUCK.
22 WELL, THIS IS MY FAVORITE.
23 THIS IS FROM THE ROPER PROPOSAL,
24 HERE, AND THIS IS -- YOU WILL SEE HOW THEY GOT
25 THERE.
26 SO PLEASE, BY THE WAY, YOU KNOW,
27 BECAUSE MOST OF THESE DOCUMENTS HAD BEEN SHOWN AND
28 BECAUSE WE HAD AN EXTENDED DISCUSSION WITH ONE OF

5865

1 THE WITNESSES ABOUT THE C.T.R., AND WHETHER THE
2 C.T.R. WAS A LEGITIMATE ORGANIZATION OR WHETHER IT
3 WASN'T AND WHETHER LORILLARD WAS RIGHT AND THE
4 C.T.R. WAS A BUNCH OF TOOTHLESS BOZOS OR WHETHER
5 PHILIP MORRIS WAS RIGHT AND THE C.T.R. WAS REALLY
6 DANGEROUS TO THE TOBACCO INDUSTRY AND HEARD ALL
7 ABOUT THAT BOOM, BOOM, BOOM, BOOM, YOU WANT TO SEE
8 SOME OF THOSE DOCUMENTS AGAIN, LET ME SHOW YOU ONE
9 YOU HAVEN'T SEEN.
10 NOW, THIS IS FROM 1978.
11 AND THIS IS TO THE COMMITTEE FOR
12 TOBACCO RESEARCH FILE. AND THIS IS FROM R. B.
13 SELIGMAN, JUST IN CASE WE FORGET, HERE HE IS. AND
14 ALSO PRESENT AT THIS MEETING HERE IS A TOM OSDENE.
15 AND LEST WE FORGET ABOUT MR. OSDENE, HERE HE IS.
16 AND ALSO PRESENT IS A GUY NAMED JIM BOWLING.
17 THESE ARE THE PEOPLE FROM PHILIP
18 MORRIS, BROWN & WILLIAMSON IS THERE. REYNOLDS WAS
19 THERE. AMERICAN TOBACCO WAS THERE. THE COMMITTEE
20 FOR TOBACCO RESEARCH WAS THERE.
21 BROWN & WILLIAMSON, LORILLARD AND PHILIP MORRIS HAD
22 THREE DIFFERENT PEOPLE.
23 THE ONE ON THE TOP, BOWLING, IS
24 SOMEONE WE HAVEN'T HEARD TOO MUCH ABOUT. BUT YOU
25 GOT THE PLEASURE OF SEEING HIM TWICE IN THIS TRIAL
26 SO FAR ON VIDEO TAPE.
27 IN 1976, THERE WAS A BRITISH
28 INTERVIEW WHERE THEY TALKED TO TWO OF THE PHILIP

5866

1 MORRIS PEOPLE, ONE WAS WAKEHAM.
2 AND AT THE TIME THAT YOU SAW THESE
3 VIDEO TAPES BEFORE, YOU DIDN'T KNOW THAT WAKEHAM IS
4 RIGHT UP THERE, HE WAS ONE OF THE GUYS.
5 WAKEHAM WAS THE GUY. AND I WANT TO
6 PLAY THAT VIDEO TAPE AGAIN. BUT HE WAS THE GUY WHO
7 SAID TO THE BRITISH RESEARCHER, GEE WHIZ, TOO MUCH
8 TOBACCO, HARMFUL, TOO MUCH ANYTHING IS HARMFUL.
9 HE SAID, AND THE OTHER GUY WAS
10 BOWLING. AND I WANT TO PLAY HIS VIDEO TAPE AGAIN
11 TOO. BUT THERE HE IS, SENIOR VICE-PRESIDENT
12 CORPORATE AFFAIRS, PHILIP MORRIS, INC.
13 1978, MEETING IN NEW YORK.
14 THIS WHOLE DOCUMENT SHOULD BE READ
15 LATER. I AM NOT GOING TO DO IT ALL NOW. BUT ALL
16 OF THE PARTICIPANTS OF THE MEETINGS WERE REMINDED
17 THAT THERE WOULD BE NO WRITTEN RECORD OF WHAT
18 TRANSPIRED THAT WOULD BE ISSUED FOR DISTRIBUTION.
19 IF YOU TAKE NOTES, KEEP THEM IN
20 YOUR OWN PERSONAL FILE.
21 THIS IS R. B. SELIGMAN SPEAKING.
22 "IN 1978, AS A MEANS OF
23 INTRODUCTION," THIS PERSON'S NAME,
24 "DESCRIBED THE HISTORY, PARTICULARLY
25 IN RELATION TO THE C.T.R. C.T.R.

26 BEGAN AS AN ORGANIZATION CALLED
27 TOBACCO INDUSTRY RESEARCH COUNCIL,
28 (T.I.R.C.).

5867

1 "IT WAS SET UP AS AN
2 INDUSTRY SHIELD IN 1954.
3 "THAT WAS THE YEAR
4 STATISTICAL ACCUSATIONS RELATING
5 SMOKING TO DISEASES WERE LEVELED
6 AGAINST THE INDUSTRY; LITIGATION
7 BEGAN; AND THE WYNDER GRAHAM REPORTS
8 WERE ISSUED. C.T.R. HAS HELPED OUR
9 LEGAL COUNSEL BY GIVING ADVICE AND
10 TECHNICAL INFORMATION WHICH WAS NEEDED
11 AT COURT TRIALS. C.T.R. HAS SUPPLIED
12 SPOKESMEN FOR THE INDUSTRY AT
13 CONGRESSIONAL HEARINGS. THE MONIES
14 SPENT AT C.T.R. PROVIDES A BASIS FOR
15 INTRODUCTION OF WITNESSES."
16 LET ME JUST STOP RIGHT THERE FOR A
17 SECOND.
18 CAN'T ADMIT THAT NICOTINE IS
19 ADDICTIVE BECAUSE IT WILL MESS UP THE LITIGATION
20 AND IT WILL MESS UP F.D.A. REGULATION.
21 WHAT HAPPENS, WHAT WOULD HAVE
22 HAPPENED, WHAT DID THE TOBACCO INDUSTRY FEAR WOULD
23 HAPPEN IF IT ADMITTED THAT TOBACCO CAUSED CANCER?
24 THEY WERE AFRAID OF GETTING SUED.
25 THEY WERE AFRAID OF GETTING
26 REGULATED.
27 AND BECAUSE THEY WERE GETTING
28 AFRAID OF GETTING BEING SUED AND BECAUSE THEY WERE

5868

1 AFRAID OF BEING REGULATED, THEY COVERED UP.
2 AND THE UNFORTUNATE THING IS LIKE
3 SO MANY THINGS IN HUMAN EVENTS, EVEN SMALL HUMAN
4 EVENTS THAT WE CAN RELATE TO MORE, ONCE SOMETHING
5 GETS STARTED, IT SORT OF TAKES ON A LIFE OF ITS
6 OWN, AND IT IS HARD TO PUT THE BRAKES ON AND IT IS
7 HARD TO STOP AND IT'S HARD TO CHANGE THE DIRECTION.
8 AND I THINK MOST OF US IN THE
9 COURSE OF HUMAN EVENTS OF WHICH WE ARE AWARE KNOW
10 THAT SOMETIMES WHEN PEOPLE START DOING SOMETHING,
11 THAT THEY DON'T SEE WHERE IT IS GOING TO LEAD.
12 THEY DON'T NECESSARILY HAVE A TERRIBLY EVIL MOTIVE
13 AT THE VERY, VERY BEGINNING. THEY DON'T
14 NECESSARILY SAY, WELL, I AM GOING TO DO THIS AND
15 THE DOMINOES ARE GOING TO FALL THIS WAY FOR THE
16 NEXT 50 YEARS. THEY JUST START DIGGING DEEPER,
17 DIGGING DEEPER, AND THE POSITION HARDENS, AND
18 PRETTY SOON, YOU CAN'T CHANGE, YOU CAN'T TURN, YOU
19 CAN'T BREAK, YOU CAN'T DO ANYTHING. YOU ARE LOCKED
20 IN.
21 NOW, THESE PEOPLE WERE AFRAID OF
22 LAWSUITS AND BECAUSE THEY WERE AFRAID OF LAWSUITS,
23 WHAT ALL OF THIS EVIDENCE IS GOING TO SHOW AS WE
24 SEE IT, AND BECAUSE THEY WERE AFRAID THEIR PROFITS
25 WERE GOING TO GO DOWN THE TUBES, NUMBER 1, PULLED
26 AN OSTRICH. THEY PUT THEIR HEADS IN THE SAND,
27 DIDN'T WANT TO KNOW, TRIED NOT TO KNOW.
28 TWO, WHEN THAT WAS OVER, THEY WENT

5869

1 OUT OF THEIR WAY TO PURPOSELY DECEIVE, TO PURPOSELY

2 DENY THINGS THAT WERE PUT OUT THERE.
3 THREE, WHEN THAT PART WAS OVER,
4 THEN THEY STARTED CREATING DOUBT, WE WON'T ACTUALLY
5 DENY, BUT WILL CREATE AS MUCH DOUBT AS WE CAN.
6 AND 50 YEARS' WORTH OF HISTORY
7 GOING ON WHEN ALL OF THAT OCCURRED.
8 BLANK "FEELS THE SPECIAL
9 PROJECTS ARE THE BEST WAY THAT MONIES
10 ARE SPENT. ON THESE PROJECTS, C.T.R.
11 HAS ACTED AS A FRONT; HOWEVER, THERE
12 ARE TIMES WHEN C.T.R. HAS BEEN
13 RELUCTANT TO SERVE IN THAT CAPACITY
14 AND IN RARE INSTANCES THEY HAVE
15 REFUSED TO SERVE IN THAT CAPACITY."
16 NOW, THIS IS NOT A DOCUMENT THAT I
17 DISCUSSED WITH THE BIOLOGY PROFESSOR, BECAUSE THIS
18 WAS NOT A DOCUMENT THAT WAS SHOWN TO HER. BUT THIS
19 IS A DOCUMENT THAT HAS ALWAYS EXISTED SINCE 1978
20 AND THIS IS A DOCUMENT WHICH SAYS THE EXACT
21 OPPOSITE OF WHAT HE CAME HERE TO TELL US HERE,
22 C.T.R. WAS SET UP AS A SHIELD, C.T.R. HAS ACTED AS
23 A FRONT. IT IS THE RARE OCCASION WHEN C.T.R. HAS
24 REFUSED TO SERVE AS A FRONT.
25 "MAJOR PROBLEMS EXIST TODAY
26 BECAUSE OF THE ADVANCED AGES OF MOST
27 MEMBERS OF C.T.R.'S SCIENTIFIC
28 ADVISORY BOARD. IT IS FELT THAT THEY
5870
1 WOULD BE OF LITTLE USE AS WITNESSES
2 TODAY BECAUSE THEY COULD NOT WITHSTAND
3 THE RIGGERS OF CROSS-EXAMINATION.
4 "GETTING AWAY FROM THE
5 HISTORICAL STORY," SO AND SO
6 "MENTIONED THAT THE PUBLIC RELATIONS
7 VALUE OF THE C.T.R. MUST BE CONSIDERED
8 AND CONTINUED. ALSO, PRODUCT
9 LIABILITY HAS TO BE DEFENDED,
10 THEREFORE, THE INDUSTRY SHOULD NOT
11 TAKE ANY ACTION WHICH WILL DILUTE THE
12 CAUTION LABEL ON THE CIGARETTE
13 PACKAGES."
14 SO THERE WE HAVE THEM SAYING WE, AS
15 A STRATEGY, ARE GOING TO SELL CANCER-CAUSING
16 MATERIAL TO THE PUBLIC AND WE DON'T WANT TO MESS
17 WITH THOSE WARNINGS THERE, BECAUSE IF THERE'S EVER
18 A TRIAL, THEY ARE GOING TO SAY, WARNING, WARNING,
19 WARNING, TOUGH LUCK.
20 HERE, JIM BOWLING, SENIOR V. P. FOR
21 CORPORATE AFFAIRS.
22 "JIM BOWLING ADDED A BIT TO
23 THE HISTORY. THE T.I.R.C. WAS FIRST
24 ESTABLISHED AT HILL & KNOWLTON PUBLIC
25 RELATIONS WHEN THE GOVERNMENT BEGAN TO
26 TAKE ACTION AGAINST THE INDUSTRY. THE
27 BLATNIK COMMITTEE HEARINGS OF THE
28 TOBACCO INSTITUTE WAS SPLIT OUT OF THE
5871
1 T.I.R.C. EACH TO HANDLE ITS OWN
2 FUNCTION - SCIENCE VERSUS PUBLIC
3 OPINION. JIM NOTED THAT IN THE PAST
4 THE INDUSTRY HAS BEEN VERY SUCCESSFUL
5 BECAUSE IT HAS BEEN ABLE TO RECOGNIZE
6 AND ANTICIPATE TRENDS OF BOTH THE

7 GOVERNMENT AND THE PUBLIC; THUS, WHEN
8 GOVERNMENT ACTION ACTIVITY TAKES
9 PLACE, THE INDUSTRY HAS BEEN PREPARED
10 TO REACT IMMEDIATELY."
11 SO THIS IS NUMBER 331.
12 LET'S JUST TAKE A QUICK LOOK AT
13 THESE BECAUSE WE HAVE SEEN THEM BEFORE.
14 1953, THIS IS FROM THE STATE
15 HISTORICAL SOCIETY IN WISCONSIN. THIS HAS TO DO
16 WITH HILL & KNOWLTON DOCUMENTS.
17 WHEN DR. DOLL AND DR. HILL AND
18 DR. WYNDER PUT OUT THIS INCREDIBLY IMPORTANT
19 SCIENTIFIC INFORMATION, THE TOBACCO INDUSTRY IN
20 AMERICA REACTED BY HIRING SCIENTISTS? DOCTORS?
21 SPIRITUAL LEADERS? PEOPLE TO GIVE THEM LESSONS IN
22 MORALITY? OR PUBLIC RELATIONS PEOPLE?
23 THE LAST ANSWER GETS THE PRIZE.
24 SO HILL & KNOWLTON WAS HIRED TO
25 HANDLE THE TOBACCO INDUSTRY'S LITTLE PROBLEM THAT
26 ITS PRODUCT NOW WAS KNOWN TO BE KILLING LOTS AND
27 LOTS AND LOTS OF PEOPLE.
28 "THE GROUP WAS CALLED

5872

1 TOGETHER BY MR. PAUL HAHN, PRESIDENT
2 OF THE AMERICAN TOBACCO COMPANY, CHIEF
3 EXECUTIVE OFFICER OF ALL THE LEADING
4 COMPANIES, REYNOLDS, PHILIP MORRIS,
5 BENSON AND HEDGES, U.S. TOBACCO, BROWN
6 & WILLIAMSON, HAVE AGREED TO GO ALONG
7 WITH A PUBLIC RELATIONS PROGRAM ON THE
8 HEALTH ISSUE."
9 A PUBLIC RELATIONS PROGRAM ON THE
10 HEALTH ISSUE.
11 "THE COMPANIES DO NOT FAVOR
12 THE INCORPORATION OF A FORMAL
13 ASSOCIATION. THEY PREFER STRONGLY THE
14 ORGANIZATIONS OF AN INFORMAL COMMITTEE
15 WHICH WILL BE SPECIFICALLY CHARGED
16 WITH PUBLIC RELATIONS FUNCTION AND
17 READILY IDENTIFIED AS SUCH.
18 "ONE NAME HAD BEEN
19 CONSIDERED, TOBACCO INDUSTRY COMMITTEE
20 FOR PUBLIC INFORMATION. JOHN HILL
21 SUGGESTED THAT HE FELT THE WORD
22 'RESEARCH' SHOULD APPEAR ALONG WITH
23 INFORMATION.
24 "THEY REALIZE THE INDUSTRY
25 SHOULD NOT ENGAGE MERELY IN A
26 DEFENSIVE CAMPAIGN, REPLYING TO AND
27 ANSWERING INDIVIDUAL RESEARCH PAPERS
28 OR MAGAZINE ARTICLES. THEY FEEL THEY

5873

1 SHOULD SPONSOR A PUBLIC RELATIONS
2 CAMPAIGN WHICH IS POSITIVE IN NATURE
3 AND IS ENTIRELY PRO CIGARETTE. THEY
4 ARE CONFIDENT THEY CAN SUPPLY US WITH
5 COMPREHENSIVE AND AUTHORITATIVE
6 SCIENTIFIC MATERIAL WHICH COMPLETELY
7 REFUTES THE HEALTH CHARGES.
8 "THEY ARE ALSO EMPHATIC IN
9 SAYING THAT THE ENTIRE ACTIVITIES OF
10 THE LONG-TERM, CONTINUING PROGRAM,
11 THEY FEEL THE PROBLEM IS ONE OF

12 PROMOTING CIGARETTES, PROTECTING THEM
13 FROM THESE ATTACKS AND OTHERS EXPECTED
14 IN THE FUTURE. EACH OF THE COMPANY
15 PRESIDENTS ATTENDING EMPHASIZED THE
16 FACT THAT THEY CONSIDER THE PROGRAM TO
17 BE A LONG-TERM ONE."

18 AND HERE'S HOW LONG-TERM IT WAS.
19 THAT PROGRAM WENT ON UNTIL IT WAS FORCED OUT OF
20 EXISTENCE AT THE END OF 1997. IT WENT ON FROM 1954
21 UNTIL THE END OF 1997.

22 AND INCREDIBLE, SOMEONE IN THIS
23 TRIAL, MAYBE TWO PEOPLE IN THIS TRIAL, ONE A
24 DEFENSE WITNESS, CALLED THIS AN EPIDEMIC.

25 AND THIS EPIDEMIC WAS HANDLED FROM
26 1954 TO 1957, THE PUBLIC RELATION TEAM.

27 "WE AGREE THAT THE MAJOR
28 PROBLEM IS TO DISSEMINATE INFORMATION

5874

1 ON HAND RATHER THAN CONDUCT NEW
2 RESEARCH.

3 "AS ANOTHER INDICATION OF
4 HOW SERIOUS THE PROBLEM IS, THE
5 OFFICIAL STATED THAT SALESMEN IN THE
6 INDUSTRY ARE FRANTICALLY ALARMED THAT
7 THE DECLINE IN TOBACCO STOCKS ON THE
8 STOCK EXCHANGE HAS CAUSED GRAVE
9 CONCERN, ESPECIALLY SINCE TOBACCO,
10 WILL BE MUCH HIGHER NEXT YEAR BECAUSE
11 OF THE TERMINATION OF THE EXCESS
12 PROFITS TAXES."

13 WE ARE EXTREMELY CONCERNED ABOUT
14 THE PUBLIC HEALTH OF THE PEOPLE WHO USE OUR
15 PRODUCTS. WE ARE EXTREMELY CONCERNED THAT OUR
16 STOCKS WILL GO DOWN ON THE STOCK MARKET.

17 THIS GOES TRUE FOR ALL OF THEM,
18 PHILIP MORRIS IS THE ACKNOWLEDGED BIG, BIG, BIG
19 KHAHUNA HERE. DISRESPECT THEIR CUSTOMERS,
20 DISRESPECTED MR. BOEKEN, DISRESPECTED THE PUBLIC,
21 DISRESPECTED THE SCIENTIFIC COMMUNITY,
22 DISRESPECTED, B.S.'D AND LIED TO THE GOVERNMENT,
23 AND IT WAS DONE BECAUSE THEY ARE AFRAID OF THEIR
24 POSITION IN THE STOCK MARKET AND SALES OF THEIR
25 PRODUCT.

26 "THE CURRENT PLANS ARE FOR
27 HILL & KNOWLTON TO SERVE AS THE
28 OPERATING AGENCY OF THE COMPANIES,

5875

1 HIRING ALL THE STAFF AND DISBURSING
2 ALL THE FUNDS."

3 THERE IS EVIDENCE HERE FROM
4 DR. GOLDBERG AND I THINK YOU CAN SEE IT IN THIS OF
5 THESE DOCUMENTS THAT THE C.T.I.R.C., WAS RUN OUT OF
6 THE HILL & KNOWLTON PUBLIC RELATIONS FIRM'S OFFICE.
7 THE PEOPLE THAT ANSWERED THE PHONES AND THE PEOPLE
8 THAT WRITE THE LETTERS DEALING WITH THE TOBACCO
9 INDUSTRY RESEARCH COUNCIL WERE PAID P. R. PEOPLE.

10 HERE'S HOW -- EXCUSE ME FOR A
11 SECOND.

12 HERE'S HOW WE ARE ABOUT TO SEE HOW
13 THE T.I.R.C. WENT ABOUT ITS INTERESTS IN PEOPLE'S
14 HEALTH AS A BASIC RESPONSIBILITY PARAMOUNT TO ALL
15 OTHERS, WE ARE ABOUT TO SEE HOW THEY COOPERATED
16 CLOSELY WITH THOSE WHO'S TASK IT WAS TO SAFEGUARD

17 THE PUBLIC HEALTH.
18 HERE'S HOW THEY WORK.
19 IN AUGUST OF 1954, THIS MEMO WAS
20 STATED TO BE HIGHLY CONFIDENTIAL, MINIMUM OF
21 CIRCULATION, NO ADDITIONAL COPIES WILL BE MADE.
22 HERE'S A HISTORY OF THEIR PROGRESS
23 REGARDING THE PUBLIC HEALTH.
24 "ON JANUARY 4, THE
25 ADVERTISEMENT AND NEWS ANNOUNCEMENT
26 APPEARED AND THE T.I.R.C. WAS IN
27 BEING, WITH PAUL HAHN AS CHAIRMAN FOR
28 THE FIRST THREE MONTHS.

5876

1 "SINCE THE COMMITTEE HAD NO
2 HEADQUARTERS AND NO STAFF,
3 HILL & KNOWLTON WAS ASKED TO PROVIDE A
4 WORKING STAFF AND TEMPORARY OFFICE
5 SPACE. AS A FIRST ORGANIZATIONAL
6 STEP, PUBLIC RELATIONS COUNSEL
7 ASSIGNED ONE OF ITS EXPERIENCED
8 EXECUTIVES TO SERVE AS THE ACCOUNT
9 EXECUTIVE. ONE OF HIS FUNCTIONS WAS
10 TO BE THE EXECUTIVE SECRETARY FOR THE
11 TOBACCO INDUSTRY RESEARCH COUNCIL."
12 NOT A SCIENTIST, NOT A DOCTOR, NOT
13 A PROFESSOR, NOT A RESEARCHER, NOT A PUBLIC HEALTH
14 OFFICIAL, BUT A PUBLIC RELATIONS PERSON.
15 "THE FINAL STEP IN THE
16 FORMAL ORGANIZATION OF THE TOBACCO
17 INDUSTRY RESEARCH COUNCIL --
18 COMMITTEE, WAS THE SELECTION OF
19 TIMOTHY HARTNETT, RETIRING PRESIDENT
20 OF BROWN & WILLIAMSON TOBACCO COMPANY
21 AS THE FULL TIME CHAIRMAN, RATHER THAN
22 HAVE A ROTATING CHAIRMANSHIP.
23 "PERIODIC MEETINGS ARE HELD
24 WITH PUBLIC RELATION REPS OF THE
25 VARIOUS COMPANIES."
26 HERE ARE SOME OF THE THINGS THEY
27 DO.
28 "THROUGH PERSONAL CONTACTS,

5877

1 ADVANCE INFORMATION WAS OBTAINED THAT
2 A PROMINENT MAGAZINE INTENDED TO
3 REPORT A GROWING LACK OF INTEREST IN
4 THE T.I.R.C. PROGRAM ON THE PART OF
5 PARTICIPATING COMPANIES. THIS
6 REFERENCE WAS REMOVED FROM THE STORY
7 WHEN THE FACTS WERE BROUGHT BEFORE THE
8 MAGAZINE EDITORS.
9 "BY PERSONAL CONTACT,
10 ADVANCE KNOWLEDGE WAS OBTAINED OF THE
11 STORY ON SMOKING BY BOB CONSIDINE, FOR
12 COSMOPOLITAN. INFORMATION WAS
13 SUPPLIED RESULTING IN SEVEN REVISIONS
14 AND FIVE QUALIFYING ADDITIONS TO THE
15 STORY WHICH WAS ALL IN TYPE.
16 "PERSONAL DISCUSSION WITH
17 THE EDITORIAL WRITERS AND THE
18 SUPPLYING OF MATERIALS PROCEEDED THE
19 APPEARANCE OF SEVERAL POSITIVE
20 EDITORIALS IN THE 'NEW YORK DAILY
21 NEWS.' "

22 "THROUGH PERSONAL CONTACTS,
23 RADIO AND T.V. NEWS MEN AND
24 COMMUNICATORS RECEIVED FREQUENT
25 INFORMATION CONSIDERING -- CONCERNING
26 THE T.I.R.C."
27 AND I READ THIS DURING THE TRIAL.
28 BEFORE WE GO ALL THE WAY, INCLUDING LOS ANGELES AND

5878

1 KNX, WHERE THEY MAKE CONTACTS AND TRY TO PLANT
2 STORIES.
3 "ONE NEGATIVELY AIMED
4 PROGRAM, WNBT, WHICH WAS BEING
5 SCHEDULED ON THE CIGARETTE CONTROVERSY
6 WAS POSTPONED AFTER A DISCUSSION OF
7 T.I.R.C. FACTS.
8 "ANOTHER T.V. PROGRAM ON ABC
9 WHICH DID DEAL WITH THE CIGARETTE
10 CONTROVERSY ENDED ON A FAVORABLE NOTE
11 AFTER CONFERENCES WITH PRODUCERS AND
12 PRESENTATION OF FACTS."
13 BY DECEMBER OF 1957, WE START
14 HEARING ABOUT "RESEARCH PROGRAM THROWS DOUBTS ON
15 SMOKING CHARGES." WHO'S EARS WERE THOSE DOUBTS
16 MEANT FOR? CUSTOMERS, REGULATORS, GOVERNMENT.
17 DON'T WORRY, IT ISN'T SO BAD.
18 DON'T WORRY, IT ISN'T WHAT THEY SAY. DON'T WORRY,
19 THERE ARE OTHER REASONS FOR WHAT'S GOING ON. DON'T
20 YOU WORRY. NO SUBSTANCE HAS BEEN FOUND IN TOBACCO
21 SMOKE KNOWN TO CAUSE CANCER IN HUMAN BEINGS.
22 THERE IS NO SCIENTIFIC MOUSE
23 CARCINOGEN FOUND THAT ACCOUNTS FOR BIOLOGIC
24 ACTIVITY REPORTED ON THE SKINS OF SOME LABORATORY
25 MICE.
26 IN 1958, AT THE AMERICAN TOBACCO
27 COMPANY, WHEN THEY WROTE TO MR. HILL, HERE'S WHAT
28 THEY HAD TO SAY.

5879

1 "THE TOBACCO INSTITUTE'S
2 MAJOR AREA OF ACTIVITY AND MAJOR
3 OBJECTIVE SHOULD BE TO DEFEND THE
4 TOBACCO INDUSTRY AGAINST THE ATTACKS
5 FROM WHATEVER SOURCE ON TOBACCO AS AN
6 ALLEGED HEALTH INDUSTRY."
7 ALLEGED MEANING AIN'T PROVED. WE
8 DENY IT. JUST AN ACCUSATION. ALWAYS INNOCENT
9 UNTIL PROVEN GUILTY. NOTHING WRONG WITH OUR
10 PRODUCT. DON'T YOU WORRY.
11 "IN THE PRESENT STATE OF
12 EVIDENCE, THE POSITION OF THE
13 INSTITUTE SHOULD BE COMPARABLE WITH
14 THAT OF THE T.I.R.C. AND ITS
15 SCIENTIFIC ADVISORY BOARD TO THE SAME
16 DEGREE OF COMPATIBILITY AS REPRESENTED
17 BY PUBLICATION TOBACCO AND HEALTH.
18 "THE POSITION OF THE
19 SCIENTIFIC ADVISORY BOARD, TO DATE, IS
20 THAT SCIENTISTS DO NOT YET KNOW THE
21 ANSWER TO THE QUESTION WHETHER TOBACCO
22 IS A HEALTH HAZARD; FURTHER RESEARCH
23 IS NEEDED."
24 THAT HAS SUCH A NICE RING TO IT,
25 SOMETHING THAT FITS SO WELL SHOULDN'T BE DISCARDED,
26 BUT THAT'S EXACTLY WHAT WE HEARD, FROM THAT SMILING

27 GUY FROM PHILIP MORRIS TO CONGRESS IN 1994.
28 HE SAID ALMOST VERBATIM IN 1954,

5880

1 SCIENCE DOES NOT YET KNOW THE ANSWER TO THE
2 QUESTION WHETHER TOBACCO IS A HEALTH HAZARD,
3 FURTHER RESEARCH IS NEEDED.
4 DR. CARCHMAN, LET'S THINK ABOUT
5 THIS. NOW THAT PHILIP MORRIS HAS ADMITTED THAT ITS
6 PRODUCT CAUSES CANCER, DR. CARCHMAN HAS TOLD US
7 THAT NOW, FINALLY, STARTING IN THE YEAR 2000, A
8 MARLBORO CIGARETTE HAS FINALLY BEEN TESTED,
9 ACCORDING TO HIM, FOR THE FIRST TIME EVER, IN
10 HISTORY, FOR BIOLOGIC ACTIVITY.

11 PHILIP MORRIS FINALLY, AFTER IT
12 FESSED UP, DECIDED THAT IT WAS GOING TO TEST A
13 MARLBORO CIGARETTE TO FIND OUT WHAT IN IT CAUSES
14 CANCER.

15 2000, DR. CARCHMAN SAID, IN ORDER
16 TO FIND OUT WHAT, IN A MARLBORO CIGARETTE CAUSES
17 CANCER -- BY THE WAY, YOU KNOW, CANCER IN HUMANS
18 TAKES A LONG TIME TO HAPPEN. TEN YEARS, TWENTY
19 YEARS, THIRTY YEARS. IT IS MAYBE A LOT OF TIME TO
20 FIND OUT.

21 PHILIP MORRIS, IN ORDER TO FIND OUT
22 WHAT IN ITS MARLBORO CIGARETTES CAUSES CANCER, HAS
23 SIGNED UP SOME VOLUNTEERS.

24 AND PHILIP MORRIS HAS HAD THESE
25 PEOPLE SIGN WAIVERS AND CONTRACTS BECAUSE THIS IS
26 SUCH A DANGEROUS UNDERTAKING.

27 THINK ABOUT THAT.

28 THEY ARE SIGNING UP PEOPLE TO SMOKE

5881

1 THEIR CIGARETTES FOR A HEALTH STUDY THAT IS
2 PROBABLY 45 YEARS OVERDUE, AND THEY ARE MAKING
3 THESE PEOPLE SIGN DOCUMENTS ABOUT HOW DANGEROUS IT
4 IS.

5 FOR ALL OF YOU FORMER SMOKERS, NOT
6 THE NEW KIND OF SMOKER THAT YOU CAN SMOKE ONE A DAY
7 OR ONE A WEEK OR THREE A DAY, BUT FOR ALL OF YOU
8 FORMER SMOKERS WHO WERE HOOKED, WHERE THE HECK WAS
9 PHILIP MORRIS, KNOWING EVERYTHING THAT WE KNOW THEY
10 KNEW, DID THEY COME AND GET OUR SIGNATURES, DID
11 THEY COME AND GET ANYONE'S SIGNATURE ON A PIECE OF
12 PAPER SAYING, LISTEN UP, BEFORE YOU SMOKE THIS
13 STUFF, HERE'S WHAT WE TRULY WANT YOU TO KNOW, NO
14 DISINFORMATION, NO MISINFORMATION, NO LIES AND NO
15 B.S.

16 MR. LEITER: OBJECTION.

17 MR. PIUZE: SIGN HERE.

18 THE COURT: THE UNDERLYING REASON, LEGAL
19 REASON?

20 MR. LEITER: PREEMPTION, YOUR HONOR.

21 THE COURT: OVERRULED.

22 MR. PIUZE: SO I THOUGHT IT WAS LIKE A
23 LITTLE BIT OF SIX HUMOR AFTER RUNNING WHAT IS
24 PROBABLY THE LARGEST HUMAN EXPERIMENT IN THE
25 HISTORY OF THE WORLD, IN WHICH AT ONE TIME 60
26 PERCENT OF ALL OF THE MEN IN THIS COUNTRY, IN THE
27 '50'S, AND '60'S, ACCORDING TO THEIR OWN WITNESS,
28 SMOKE CIGARETTES, THAT NOW, FINALLY, AFTER BEING

5882

1 CORNERED, IN OTHER WORDS, AND AFTER ADMITTING IT,
2 NOW THEY CAN TEST THEIR PRODUCT TO SEE WHAT IN IT

3 CAUSES CANCER.
4 AND IN ORDER TO DO THAT, THEY GOT
5 TO GET PEOPLE TO SIGN ON THE DOTTED LINE FIRST.
6 IT'S UNBELIEVABLE.
7 "THE POSITION OF THE TOBACCO
8 INFORMATION COMMITTEE REPRESENTING THE
9 INTERESTS THAT SUPPORT T.I.R.C. BUT
10 NOT SPEAKING FOR T.I.R.C. IS AN
11 AFFIRMATIVE PRESENTATION OF MATERIAL
12 WHICH REBUTS AND DISCREDITS THESE
13 HEALTH CHARGES.
14 "IN MY VIEW, THE POLICY OF
15 THE INSTITUTE REGARDING INQUIRIES AS
16 TO THE MODERATION IN SMOKING SHOULD BE
17 THAT WE BELIEVE THAT SMOKING IS NOT
18 HARMFUL TO NORMAL INDIVIDUALS, THAT
19 OVER-INDULGENCE AND EXCESS IN
20 ANYTHING," THIS IS THE APPLE SAUCE,
21 "OVER INDULGENCE AND EXCESS IN
22 ANYTHING MAY BE HARMFUL, THAT WHATEVER
23 OVER-INDULGENCE OR EXCESS VARIES WITH
24 THE PARTICULAR INDIVIDUAL WHO SHOULD
25 BE GUIDED BY THE ADVICE OF A PHYSICAL.
26 "THE INSTITUTE'S POSITION ON
27 ALL SUCH MATTERS SHOULD BE THAT IT
28 IS -- IT HAS NOT BEEN PROVED THAT

5883

1 TOBACCO IS A HEALTH HAZARD. IT IS A
2 UNIVERSAL PLEASURE OF RELAXATION,
3 HUNDREDS OF THOUSANDS OF PEOPLE DEPEND
4 ON IT FOR THEIR LIVELIHOOD; ANY STEP
5 IN THE DIRECTION OF DISCOURAGING
6 CONSUMPTION OF TOBACCO IS UNJUSTIFIED
7 AND HARMFUL."
8 I AM GETTING THERE.
9 1961, THIS IS FOR PUBLIC
10 CONSUMPTION. DR. WYNDER'S OPINIONS DO NOT ALTER
11 THE FACT THAT THE CAUSE OF LUNG CANCER CONTINUE TO
12 BE UNKNOWN, THE SUBJECT OF CONTINUING EXTENSIVE
13 SCIENTIFIC RESEARCH BY MANY AGENCIES.
14 1962, ANOTHER PRESENTS RELEASE.
15 THE PRESIDENT OF THE TOBACCO
16 INSTITUTE SENT THE FOLLOWING TELEGRAM TO FRANK
17 STANTON, PRESIDENT OF CBS.
18 "I HAVE JUST RECEIVED A
19 FIRSTHAND DETAILED ACCOUNT OF A
20 PREVIEW OF CBS REPORTS ON 'TEENAGE
21 SMOKER.' EXTREME OPINIONS AND
22 PREJUDICES WITHOUT ANY REAL EFFORT TO
23 EXPLORE THE FACTS AND TO DETERMINE THE
24 MERITS OF THE POSITIONS. THE SHOW
25 FAILS TO COME TO GRIPS WITH THE BASIC
26 POINT -- THAT THE CAUSE OF LUNG CANCER
27 ARE STILL UNKNOWN AND THAT EVERY
28 EFFORT SHOULD BE DIRECTED TOWARD

5884

1 FINDING THESE CAUSES."
2 AND I NEED A CHANGE OF PACE. SO
3 BECAUSE THEY WERE -- AND SO THE JURY NEEDS A CHANGE
4 OF PACE. AND SO BECAUSE THEY WERE ANGRY AT CBS FOR
5 TALKING ABOUT TEENAGE SMOKING, LET'S SEE WHAT THEY
6 HAD TO SAY ABOUT TEENAGE SMOKING.
7 IN 1976, "WHY PEOPLE START TO

8 SMOKE," THIS IS PHILIP MORRIS.
9 LET'S TALK ABOUT MR. BOEKEN. I
10 WILL LEAVE THAT UP THERE. YOU CAN SEE IT AND READ
11 IT AND I WILL TALK ABOUT MR. BOEKEN.
12 HE WAS BORN IN 1944. ON AUGUST 15.
13 IN 1954, HE WAS TEN YEARS OLD. AND
14 IN 1954, WHEN HE WAS TEN YEARS OLD, THAT'S WHEN THE
15 STUFF STARTED TO HAPPEN. THAT'S WHEN THE TOBACCO
16 INDUSTRY DECIDED ITS RESPONSE SHOULD BE PUBLIC
17 RELATION AS OPPOSED TO SCIENCE OR PUBLIC HEALTH.
18 SO HE'S A KID. AND HE LOOKS AROUND
19 IN 1954, AND HE SEES HIS FATHER SMOKES, HIS MOTHER
20 SMOKES, THE KIDS AROUND THE BLOCK SMOKE, THE PEOPLE
21 ON TELEVISION SMOKE.
22 AND THE NEWSCASTERS SMOKE, THE
23 PEOPLE ON THE TONIGHT SHOW SMOKED, ATHLETES SMOKE,
24 CELEBRITIES SMOKE. TEACHERS SMOKE. EVERYBODY
25 SMOKES.
26 ALMOST 60 PERCENT, ACCORDING TO
27 THIS WITNESS HERE, THE LAST WITNESS FOR PHILIP
28 MORRIS, THE AMERICAN MEN SMOKED.

5885

1 AND MR. BOEKEN, HE WANTS TO FIND
2 OUT WHAT THIS IS ALL ABOUT. SO AT TEN YEARS OF
3 AGE, HE PICKS UP A BUTT THAT SOMEONE ELSE HAS
4 ALREADY SMOKED. AND HE PICKS IT UP AND HE TRIES
5 IT.
6 AND FOR ALL OF EVERYBODY THAT'S
7 EVER SMOKED, YOU OUGHT TO KNOW THE FIRST ONE ISN'T
8 VERY NICE.
9 SO THAT WAS IT FOR MR. BOEKEN WHEN
10 HE WAS TEN YEARS OLD, AND HE DIDN'T REALLY THINK
11 SERIOUSLY ABOUT IT, I GUESS, UNTIL HE WAS 13 YEARS
12 OLD AND STARTED SMOKING WHEN HE WAS 13 YEARS OLD,
13 1957.
14 AND IN 1957, WHEN HE WAS 13 YEARS
15 OLD, ALL THE KIDS ON THE BLOCK SMOKED. AND
16 EVERYBODY SMOKED. SO HE STARTED TO SMOKE AND
17 ALMOST IMMEDIATELY STARTED TO SMOKE MARLBOROS, HIS
18 BRAND FOR LIFE.
19 MR. BOEKEN WANTED TO BE COOL.
20 MR. BOEKEN WANTED TO HAVE AN ADULT STATUS.
21 MR. BOEKEN WANTED TO BE GROWN UP.
22 MR. BOEKEN WANTED TO BE SOPHISTICATED. MR. BOEKEN
23 WANTED TO BE IN. AND THOSE ARE HIS WORDS FROM HIS
24 VIDEO-TAPED DEPOSITION, THAT ALSO WAS PLAYED A LONG
25 TIME AGO. AND IT'S HERE TO SEE IT AGAIN IF YOU
26 WANTED TO SEE IT.
27 BUT THAT'S WHAT HE TESTIFIED TO.
28 HERE'S WHAT PHILIP MORRIS THOUGHT

5886

1 ABOUT WHY PEOPLE SMOKE.
2 "AMONG THE REASONS WHY
3 CHILDREN TAKE UP THE HABIT ARE THEIR
4 DESIRE FOR ADULT STATUS, THEIR NEED TO
5 CONFIRM TO SOCIAL PRESSURES EXERTED BY
6 OTHER CHILDREN, IN STRIVING FOR STATUS
7 AND SELF-ASSURANCE. CHILDREN MAY
8 IMITATE THEIR PARENTS OR FAMOUS
9 PEOPLE. THE ASSOCIATION BETWEEN THE
10 SMOKING HABITS OF PARENTS AND CHILDREN
11 IS STRONG AND MANY SIDED. MORE
12 CHILDREN SMOKE IN FAMILIES WHERE BOTH

13 PARENTS SMOKE THAN IN FAMILIES WHERE
14 NEITHER PARENT SMOKES. IN ADOLESCENT
15 AND ADULT LIFE, SIMILAR FACTORS
16 INVOLVING THE INDIVIDUAL'S NEED AND
17 HIS ENVIRONMENT APPEAR TO PLAY A ROLE
18 IN THE BEGINNING OF SMOKING."

19 SO PHILIP MORRIS, IN 1976, WAS
20 ALREADY, FROM WHAT WE KNOW, FROM WHAT I CAN SHOW
21 HERE, NOSING AROUND WITH TEENAGE SMOKERS. BUT
22 CHECK THIS OUT.

23 1981 -- AGAIN, THESE LARGE ONES
24 WON'T BE IN THE JURY ROOM. SMALL ONES WILL BE, AND
25 WILL HAVE YELLOW HIGHLIGHTING.

26 IN 1981, PHILIP MORRIS THINKS IT'S
27 IMPORTANT TO KNOW AS MUCH AS POSSIBLE ABOUT TEENAGE
28 SMOKING PATTERNS AND ATTITUDES.

5887

1 "TODAY'S TEENAGER IS
2 TOMORROW'S POTENTIAL REGULAR CUSTOMER.

3 "THE OVERWHELMING MAJORITY
4 OF SMOKERS FIRST BEGAN WHILE STILL IN
5 THEIR TEENS. SMOKING PATTERNS OF
6 TEENAGERS ARE PARTICULARLY IMPORTANT
7 TO PHILIP MORRIS. IT IS DURING THE
8 TEENAGE YEARS THAT THE INITIAL BRAND
9 CHOICE IS MADE. A PART OF THE SUCCESS
10 OF MARLBORO RED DURING IT'S MOST RAPID
11 GROWTH PERIOD IS BECAUSE IT BECAME THE
12 BRAND OF CHOICE AMONG TEENAGERS WHO
13 STUCK WITH IT AS THEY GREW OLDER."

14 PHILIP MORRIS TRACKED THE
15 DEMOGRAPHICS OF THE TEENAGE SMOKERS. THEY WERE
16 DOWN TO THE AGE OF 12 YEARS OF AGE. WE CAN SEE HOW
17 12 TO 14-YEAR-OLDS SMOKE MORE AND MORE AS TIME WENT
18 ON.

19 AND THEY WERE TRACKING THIS STUFF.
20 AND MS. MERLO, WHEN SHE SAW THIS, WHAT DID SHE SAY
21 ABOUT IT?

22 UNAUTHORIZED. JUST SOME
23 DEMOGRAPHER. THAT ISN'T THE WAY IT IS. WE
24 WOULDN'T HAVE DONE THAT. TRUST ME. I WOULDN'T LIE
25 TO YOU. THAT'S NOT WHAT WE DO.

26 1981, PHILIP MORRIS, WE WILL NO
27 LONGER BE ABLE TO RELY ON A RAPIDLY INCREASING POOL
28 OF TEENAGERS FROM WHICH TO REPLACE SMOKERS.

5888

1 ONE OF THESE DOCUMENTS THEY CALL
2 "TEENAGERS REPLACEMENT SMOKERS." REPLACEMENT
3 SMOKERS.

4 "BECAUSE OF OUR HIGH SHARE
5 OF THE MARKET AMONG THE YOUNGEST
6 SMOKERS, PHILIP MORRIS WILL SUFFER
7 MORE THAN OTHER COMPANIES FROM THE
8 DECLINE IN THE NUMBER OF TEENAGE
9 SMOKERS."

10 1981, THIS DEMOGRAPHER IS LOOKING
11 INTO WHAT HAPPENS IF THERE'S A FEDERAL EXCISE TAX
12 ON CIGARETTES.

13 AND HE SAYS, THERE MAY COME A
14 CHOICE BETWEEN SMOKING OR CRUISING AROUND IN A CAR.
15 AND THE AVERAGE TEENAGER, TEENAGE MALE WITH
16 PROBABLY CHOOSE THE LATTER.

17 IF THERE'S A SUBSTANTIAL EXCISE TAX

18 INCREASE, THERE WILL BE REDUCED SMOKING
19 PARTICIPATION AMONG TEENAGERS.
20 SO EVEN THOUGH THEY WOULDN'T, AND
21 THAT DOESN'T MEAN WHAT IT SAYS, AND EVEN THOUGH
22 THEY WOULDN'T TARGET TEENAGERS, IF THEY DID, REST
23 ASSURED, PHILIP MORRIS IS A NEWCOMER, DON'T DO THAT
24 KIND OF STUFF ANY MORE, AND WE HAVE GOT MS. MERLE'S
25 WORD FOR IT.
26 '98, WHAT'S CHANGED?
27 IN THE BEGINNING, SMOKING IS ABOUT
28 IMAGE, 3,000 AMERICAN TEENS WILL LIGHT UP FOR THE
5889
1 FIRST TIME TODAY --
2 MR. LEITER: I AM GOING TO OBJECT. IT'S
3 HEARSAY BEING USED FOR TRUTH.
4 MR. PIUZE: THESE THINGS WERE SHOWN. I
5 DON'T KNOW WHAT TO SAY.
6 THE COURT: WELL, ALL RIGHT. LADIES AND
7 GENTLEMEN, THESE ARE -- THESE WERE PUT IN FRONT OF
8 YOU TO SHOW YOU WHAT WAS BEING SAID OUT IN THE
9 PUBLIC, TO WHICH MR. BOEKEN MAY OR MAY NOT HAVE
10 BEEN EXPOSED. AND THAT'S THE REASON IT IS BEING
11 OFFERED.
12 MR. PIUZE: YOUR HONOR, THIS IS 1998.
13 MR. BOEKEN, THIS ISN'T MR. BOEKEN. THIS IS FOR A
14 DIFFERENT PERSON.
15 THE COURT: WHO WAS THE WITNESS THAT PUT
16 THIS UP?
17 MR. PIUZE: COBBS HOFFMAN.
18 MR. LEITER: THIS WAS CROSS.
19 THE COURT: ALL RIGHT. FAIR ENOUGH, SAME
20 REASON, THOUGH.
21 MR. PIUZE: OKAY.
22 THE COURT: NOT FOR THE TRUTH.
23 MR. PIUZE: I AM NOT SHOWING THIS FOR THE
24 TRUTH OF THE MATTER STATED, I AM SHOWING THIS TO
25 FIND OUT HOW MUCH PHILIP MORRIS HAS CHANGED, IF IT
26 CHANGED, IF IT HAD A REASON TO CHANGE, IF IT DIDN'T
27 HAVE A REASON TO CHANGE.
28 THE COURT: NO, FOR WHAT INFORMATION WAS
5890
1 OUT IN THE PUBLIC MARKETPLACE AT THE TIME.
2 MR. PIUZE: 1999:
3 "IN T.V. AD A GROCER ASSURES
4 US WHEN IT COMES TO SEEKING SMOKES,
5 KIDS ARE CUNNING AND INSISTENT. LIFE
6 BECOMES A LOT EASIER, HE SAYS, EVER
7 SINCE HIS STORE'S POSTED A SIGN SAYING
8 'WE CARD.' THE AD'S SPONSOR AND
9 SIGNS' SUPPLIER, PHILIP MORRIS, MAKER
10 OF MARLBORO, THE NUMBER 1 BRAND AMONG
11 TEENS.
12 "DR. JOHN PIERCE, HEAD OF
13 THE CANCER PREVENTION AT U.C.S.D., IS
14 A BRIGHT -- IS BRIGHT AS A HALOGEN
15 LAMP AND AS BLUNT AS A HAMMAR. IF THE
16 TOBACCO INSTITUTE EVER HIRES A
17 METEOROLOGIST, THEY'RE SURE TO SPOT
18 THIS TURBULENCE CHURNING UP THEIR
19 RADAR SCREENS."
20 EARLY '90'S, PIERCE SURVEYED 3500
21 PLUS NON-SMOKING TEENS.
22 MR. LEITER: YOUR HONOR, I AM GOING TO

23 RENEW MY OBJECTION.
24 THE COURT: LET'S TAKE THIS OUTSIDE THE
25 PRESENCE.
26 I WOULD NEED TO REVIEW THE RECORD.
27 MR. PIUZE: OKAY, WELL, I HAVE GOT STUFF
28 HERE THAT I KNOW FOR A HUNDRED PERCENT CERTAINTY

5891

1 WAS SHOWN.
2 THE COURT: I WILL TELL YOU WHAT, IT IS
3 NOW JUST A LITTLE BIT BEFORE NOON, IF YOU COULD
4 JUST KIND OF CONCLUDE IN THE NEXT TWO OR THREE
5 MINUTES AND WE WILL TAKE THIS UP OVER THE LUNCH
6 BREAK.
7 MR. PIUZE: SURE.
8 THE COURT: THANK YOU, SIR.
9 MR. PIUZE: WHEN WE COME BACK, I HOPE TO
10 BE ABLE TO SHOW SOME DOCUMENTS WHICH WILL SHOW THAT
11 DESPITE EVIDENCE HERE AND PROCLAMATIONS HERE FROM
12 PHILIP MORRIS TO THE CONTRARY, THEY CANNOT GIVE UP
13 TARGETING TEENAGE SMOKERS, BECAUSE IF THEY GIVE UP
14 TARGETING TEENAGE SMOKERS, THEY GO OUT OF BUSINESS.
15 PEOPLE START TO SMOKE WHEN THEY ARE TEENS. AND IF
16 PEOPLE DON'T START TO SMOKE IN THEIR TEENS, THEY
17 DON'T START TO SMOKE.
18 AND IF PHILIP MORRIS GIVES UP
19 TARGETING TEENAGE SMOKERS, PHILIP MORRIS WILL
20 LITERALLY BE OUT OF THE TOBACCO BUSINESS.
21 DR. FARONE'S BOSS HAS TOLD HIM WHEN
22 HE CAME IN 1976 THAT THEY FEARED THEY WOULD BE OUT
23 OF BUSINESS IN FIVE TO TEN YEARS. WELL, THAT WAS
24 IN 1976.
25 THE DOCUMENTS THAT I AM GOING TO
26 SHOW, I BELIEVE, YOU HAVE ALREADY SEEN THEM,
27 CLEARLY INDICATE PHILIP MORRIS ISN'T GIVING UP
28 TARGETING TEENAGE SMOKERS.

5892

1 THEIR WORD ON THAT IS NO MORE TO BE
2 TRUSTED THAN THEIR WORD ON YOUR HEALTH IS
3 IMPORTANT, OUR CUSTOMERS ARE MOST IMPORTANT, WE
4 WOULDN'T DREAM OF HURTING YOU, AND WE WILL GO OUT
5 OF BUSINESS TOMORROW IF WE HURT YOU, AND TOBACCO
6 DOESN'T CAUSE CANCER, AND FROM MR. BIBLE, I WOULD
7 SHUT THE FACTORY DOWN TOMORROW IF EVEN ONE PERSON
8 EVER DIED FROM OUR PRODUCT.
9 THANKS, JUDGE.
10 THE COURT: ALL RIGHT, THANK YOU VERY
11 MUCH, COUNSEL.
12 LADIES AND GENTLEMEN, WE WILL TAKE
13 OUR BREAK. BE BACK HERE AT 1:30 THIS AFTERNOON.
14 REMEMBER, DO NOT DISCUSS THIS CASE
15 WITH ANYONE. THANK YOU VERY MUCH.
16
17 (THE FOLLOWING PROCEEDINGS
18 WERE HELD IN OPEN COURT OUT
19 OF THE PRESENCE OF THE JURY:)
20
21 THE COURT: WE ARE OUTSIDE THE PRESENCE
22 OF THE JURY.
23 THIS PARTICULAR DOCUMENT THAT WE
24 LOOKED AT, THE "L.A. TIMES" ARTICLE, IS IT PART OF
25 A GROUP OF DOCUMENTS THAT WERE USED IN CONNECTION
26 WITH THE HISTORIAN?
27 MR. PIUZE: YES.

1 BASICALLY, SHE LOOKED THROUGH A SERIES OF
2 DOCUMENTS, THROUGH THE "L.A. TIMES" AND OTHER
3 PLACES AND THEN RECOUNTED THE HISTORY OF SMOKING TO
4 THE JURY IN THE UNITED STATES, BASICALLY?

5 MR. PIUZE: NO. THE TIMING WAS THE
6 OPPOSITE. SHE HAD GONE THROUGH A TREMENDOUS
7 VOLUME, RECOUNTED THE HISTORY OF SMOKING AND WHAT
8 WAS IN THE "L.A. TIMES."

9 ON THE CROSS-EXAMINATION, I WANTED
10 TO JUST TEST HER AND SAY WHAT HAVE YOU SEEN, SINCE
11 YOU STARTED ON THIS PROJECT, SO THESE DOCUMENTS ARE
12 ALL FROM THE TIMEFRAME OF WHEN SHE STARTED ON HER
13 PROJECT.

14 THE COURT: THESE ARE DOCUMENTS THAT YOU
15 PUT TOGETHER?

16 MR. PIUZE: YES.

17 MR. LEITER: YES.

18 THE COURT: THEN THAT WOULD BE DIFFERENT.

19 MR. LEITER: JUST TO BE CLEAR, YOUR
20 HONOR, ON THE TIMING, THESE ARE NOT DOCUMENTS FROM
21 WITHIN THE TIME PERIOD THAT SHE STUDIED. SHE
22 STOPPED HER STUDY IN 1994. THESE ARE DOCUMENTS
23 FROM 1998 AND 1999, WHICH WERE PART OF A
24 CROSS-EXAMINATION, I THINK, TO MAKE A DIFFERENT
25 POINT.

26 BUT HERE'S MY OBJECTION. IT'S VERY
27 SIMPLE AND THAT IS HE WAS ABOUT TO USE THAT
28 DOCUMENT TO TELL THE JURY ABOUT A STUDY CONDUCTED

1 BY PEERS, AND WHAT THAT STUDY FOUND.

2 SO HE'S USING THE ARTICLE TO TALK
3 TO THE JURY ABOUT THE SUBSTANCE OF THE INFORMATION
4 CONTAINED IN THE ARTICLE, THAT'S THE BASIS OF MY
5 OBJECTION.

6 MR. PIUZE: THESE WERE ALL USED WITH
7 MERLO, MS. MERLO, THE COMPANY SPOKESPERSON. AND
8 WHEN SHE WAS TALKING ABOUT THE FACT THAT -- WHEN
9 SHE WAS TALKING ABOUT THE FACT THAT PHILIP MORRIS
10 DOESN'T TARGET TEENAGERS AT ALL, WE WENT, I WENT
11 THROUGH WITH HER AND GOT THE AMERICAN LUNG
12 ASSOCIATION, THE CALIFORNIA STATE ATTORNEY GENERAL,
13 THE CALIFORNIA STATE SUPERINTENDENT OF SCHOOLS, AND
14 THE COMMITTEE FOR TOBACCO-FREE KIDS COULDN'T TRUST
15 HER OR PHILIP MORRIS ANY FURTHER THAN THEY COULD
16 THROW THEM. AND THESE DOCUMENTS WERE USED DURING
17 THAT CROSS-EXAMINATION TOO.

18 MR. LEITER: FOR A DIFFERENT POINT.

19 THE COURT: THE POINT IS THAT THESE
20 DOCUMENTS WERE NOT OFFERED FOR THE TRUTH OF THE
21 STUDIES AND SO FORTH CONTAINED IN THEM.

22 MR. PIUZE: THAT'S TRUE.

23 THE COURT: WELL, SO I WOULD ALLOW YOU TO
24 USE IT IN THE CONTEXT IN WHICH THEY WERE USED FOR
25 WITNESSES, BUT NOT FOR THE FACTUAL ASSERTIONS.

26 MR. PIUZE: I WILL SAY IT.

27 THE COURT: THAT HAS TO BE CLEARLY STATED
28 TO THE JURY WHEN YOU USE THE DOCUMENTS.

1 MR. PIUZE: I WILL SAY IT JUST THAT WAY.

2 THE COURT: FAIR ENOUGH. THANK YOU, GOOD
3 COUNSEL. YOU HAVE A GOOD LUNCH. WE WILL SEE YOU

4 AT 1:30 THIS AFTERNOON.
5 MR. LEITER: WE NEED TO TALK ABOUT THE
6 VERDICT FORM.
7 THE COURT: RIGHT.
8 MR. LEITER: WHEN DID YOU WANT TO DO
9 THAT?
10 THE COURT: HOW ABOUT 15 MINUTES EARLY.
11 WE WILL SEE YOU AT 12:15, IN
12 CHAMBERS -- 1:15, IN CHAMBERS.
13
14 (AT 12 NOON, THE LUNCH
15 RECESS WAS TAKEN TO
16 1:30 P.M. OF THE SAME DAY.)
17
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